P R O C E E D I N G S

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

IN ITS 79th YEAR

UNIFORM CONTROLLED DANGEROUS SUBSTANCES ACT

Colony Motor Hotel
Clayton, Missouri
August 5-6, 1970

MARTIN C. JOHNSON REPORTING SERVICE, INC.
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ONE PARK AVENUE, NEW YORK, N. Y. 10016
MUrray Hill 3-6929

REPRESENTATIVES IN PRINCIPAL CITIES

Proceedings in Committee of the Whole

Uniform Controlled Dangerous Substances Act

Wednesday Morning, August 5, 1970

Mr. Tom Martin Davis of Texas presiding; Mr. John W. Thomas of South Carolina presenting the Act.

CHAIRMAN DAVIS: Before starting with the actual presentation of this Act, Commissioner Thomas, the Chairman of the Committee, has some preliminary remarks that he would like to make.

MR. THOMAS: Thank you, Mr. Davis.

Before we start the task of going through this 80-page document, I'd like to go back to refresh with you and share with you some of the problems that have confronted the Committee.

We were assigned the task three years ago of updating the Uniform Narcotic Drug Act, which has been amended three or four times since it was adopted in the late twenties or early thirties. One of the first actions of the Committee, after trying to get an education from people versed in the field, was that we concluded that action should necessarily be delayed on the draft of a proposed updating of the narcotic drug laws until federal legislation was enacted, or in position for us to consider the drafts being considered.

The Committee was fortunate, I think, to have Michael Sonnenreich, who is Deputy Chief Counsel of the Bureau of Narcotics and Dangerous Drugs, work with us as our Reporter. This is somewhat of a departure,I think, from Conference routine, having somebody directly connected with the Federal Government working with us on state legislation. It has been a tremendous help.

Mr. Sonnenreich is seated here on the podium with us. I would like the Conference to give him the privilege of the floor. He is versed with the technicalities of the bill and I'm sure some of his comments during the day will be most helpful, and I would so move.

CHAIRMAN DAVIS: Unless there is objection, the Reporter will be given the privileges of the floor in discussing the bill. Is there any objection? [There was none.]

MR. THOMAS: I would like to also introduce, in the rear of the room, some of Mr. Sonnenreich's legal assistants, who have also been very much interested in helping us.

Pete Kinsey, if you will stand up, please--Bob Pinco, Candy Cowan--those three are lawyers in the Bureau with Mike--and their hard-working secretary who has been with us and has knocked out this 70-page draft again since Sunday, Pat Prato. [Applause]

After getting the first draft of the federal law, this Committee went to work, and we had a working draft. The one before you is designated the Third Tentative Draft, Sixth Working Draft. I'm sure there have been more than six Working Drafts that we have had.

In your books is the First Tentative Draft that we went over with the Committee on Style at a meeting in Washington during the spring. We came up with a Second Tentative Draft, and since meeting with Section D here at the Conference, the Third Draft has cleared up many of the minor discrepancies in our Second Draft.

The federal law relates to the so-called dangerous substances and when we use the words "controlled dangerous substances", we have reference to narcotics, depressants, stimulants, hallucinogens, and the precursors of some of the substances that go into them. We define "controlled" as being the drugs and substances which we schedule in Article II of the bill. We specifically exclude distilled spirits, wine, malt beverages, tobacco.

The federal law at this time is pending in the House. No action has been taken. The Senate passed the so-called Dodd Bill, which our bill here follows very, very closely. In the House the matter is before two subcommittees;

one is Ways and Means, headed by Congressman Mills, and the other portion of the drug problem is before Interstate Commerce, headed by Congressman Staggers.

We understand that there is a spirit of harmony and getting together of these two Committees. I'm advised that there is a distinct possibility that the two Committees will present a report to the House, and that this subject could be on the floor of the House within a week.

I believe, based on what I have been told, that once the House bill is concluded--and there's very little difference, as I understand it, between the thinking of the two Committees--one of the problems, which we will allude to later, is whether there should be five schedules of drugs, rather than four. That is of no real concern, as we see it, in that our schedules in our Uniform Act should parallel and follow either the four federal schedules or the five federal schedules. There will be no difference between our Uniform Act and the Federal Act on the scheduling of the substances.

The Working Draft of this Committee last December has been adopted by three states at this time: Maryland, South Dakota and Louisiana. It has been adopted in Guam, and my understanding is that the New Jersey Legislature now has it under consideration, and may take action in the next few

months.

All of our legislatures, I believe, except Kentucky, will meet in 1971. The President of the United States and his Attorney General have made the control of dangerous substances one of the activities of the Administration. The Attorney General has directed Mr. Sonnenreich to call upon the governors of the several states. This is subsequent to the President's Governors Conference of, I believe, last December. The governors and the attorney generals of the various states have all been most insistent that they be fed a Model or Uniform Act on this subject that they can take before their legislatures.

It has been our thinking in the Committee and the Section that it is mandatory--necessarily so--to have uniformity in this field between federal and state law and between the various states. We are of the belief that if we cannot give the states a Uniform Act for consideration in their 1971 sessions that we will have many states, in addition to the three which have already adopted the draft version, enacting this law or our draft into law in 1970.

I will go back just a moment and relate the federal and state law to you. There is really a parallel between the two, with a few obvious exceptions. Our law does not deal

with import-export. We do not deal with quotas. We do not deal with order forms or labeling. This is all pre-empted by the federal bill. We do not have minimum standards for manufacturing, distribution, and research in our state bill, because we feel that is something that the Federal Government should regulate. The federal bill does pre-empt those fields.

The federal law protects the researchers that they have clothed with the right to have possession of the substances for research purposes, and federal record keeping will be acceptable, as we have written it, for state record keeping. So we have got a meshing, or a trellis of state and federal law, except in those fields where they follow right up the ladder together.

The registration under federal law will be tantamount to the same thing as registration for state law. There will not be fifty separate registrations for industry to follow. The industry, the drug manufacturers and distributors, have all been brought into consultation. I can't say there has been unanimity, but I think all of them are most desirous of their being a uniform state law. It will help them.

We feel that it is probably an unprecedented thought to go through this 80-page document today. This is the time we have allotted, in which we are most hopeful that we can do

so. We feel it is important that we of the Conference have this bill available in January.

With that thought in mind, as has been done, I think, in at least two other cases, if we get through it and have the Conference put its stamp of approval on it, we would want it conditionally done, so that the work product of the Conference could be conformed to the federal law, approved by the Executive Committee, and perhaps next year ratify any changes that have to be made to conform to the federal law, when enacted, which we believe will be within a month or so.

With those preliminary remarks, let me go back and just briefly outline what we have in front of us, and then we will move forward.

Article I, which is the first seven or eight pages, deals strictly with definitions. Article II sets up the standards and schedules. It makes provision for the administrator or agency or the individual in the state in charge of the program to add to the schedule, to take out of the schedule, or to change a substance from one schedule to another. These substances are scheduled according to their potential for abuse and their lack of acceptability for medical use or their accepted use in treatment with restrictions.

Article III deals with regulation, manufacture,

distribution and dispensing,and registering of pharmacists and physicians. Article IV is the offenses and penalties sections where we define the prohibited acts. The penalties are broken down in the same sort of order as the schedule of substances. Article V deals with enforcement and administrative proceedings, relates to warrants, inspections, forfeitures, cooperation between state and federal on the subject matter; and Article VI is a miscellaneous section.

There has been spirited discussion in the Section and in the Committee. We have considered a wide range of things; for example, freeing marijuana from all controls, whether it should be a misdemeanor for simple possession, or a felony. There has not been unanimity on one or two or three points. We will allude to those as we go along.

With those preliminary comments, I suggest we move forward.

MR. VAUGHAN: The draft begins about four pages in, on page labeled No. 1.

UNIFORM CONTROLLED DANGEROUS SUBSTANCES ACT

ARTICLE I

[DEFINITIONS]

SECTION 101. [Definitions.]

I will pause at the end of each subsection.

(a) Terms used in this Act shall have the following meaning:

(b) "Administer" means the direct application of a controlled dangerous substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(1) a practitioner (or, in his presence, by his authorized agent), or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(c) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser but does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(d) "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice or its successor agency.

(e) "Controlled dangerous substance" means a drug, substance, or immediate precursor in Schedules I through IV of Article II of this Act. The term does not include distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in [insert relevant

sections if applicable].

(f) "Counterfeit substance" means a controlled dangerous substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(g) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a controlled dangerous substance, whether or not there is an agency relationship.

(h) "Dispense" means to deliver a controlled dangerous substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery. "Dispenser" means a practitioner who dispenses.

(i) "Distribute" means to deliver other than by administering or dispensing a controlled dangerous substance. "Distributor" means a person who distributes.

(j) "Drug" means (1) substances recognized in the

official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this paragraph; but does not include devices or their components, parts, or accessories.

(k) "Immediate precursor" means a substance which the [appropriate person or agency] has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled dangerous substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(l) "Manufacture" means the production, preparation, propagation, compounding, or processing of a controlled dangerous substance, either directly or by extraction from substances of natural origin, or independently by means

of chemical synthesis, or by a combination of extraction or chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, or labeling of a controlled dangerous substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled dangerous substance in the course of his professional practice, or

(2) by a practitioner (or under his supervision) for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(m) "Marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks

(except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

(n) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extractions of coca leaves which do not contain cocaine or

ecgonine.

(o) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It shall not include, unless specifically designated as controlled under Section 201 of this Act, the dextro-rotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan), but does include its racemic and levorotatory forms.

I almost look as though I know what I was saying, don't I? [Loud laughter]

(p) "Opium poppy" means the plant of the species Papaver somniferum L., except the seeds thereof.

(q) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(r) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(s) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator, or other person licensed,

registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled dangerous substance in the course of professional practice or research in this State.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled dangerous substance in the course of professional practice or research in this State.

(t) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled dangerous substance.

(u) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(v) "Ultimate user" means a person who lawfully possesses a controlled dangerous substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

CHAIRMAN DAVIS: Are there any questions about these very simple and clearly understood definitions in Article I? [Laughter]

MR. FRASER: Mr. Chairman, in subdivision (j) it twice refers to "man or other animals". I would like to delete the word "other", because of the obvious implications, and in that connection you may be interested in the fact that when I was taught about evolution, I asked my mother about it, and she said: "Well, Henry, perhaps you are descended from an ape, but I'm not."

CHAIRMAN DAVIS: We did not understand exactly what part you wished to be stricken.

MR. FRASER: Paragraph (j), lines 48 and 50. It seems as though the sense would be complete without putting in the word "other" before "animals".

MR. VAUGHAN: That's the same as the Pure Food and Drug Division. We'll certainly consider your suggestion.

MR. FRASER: Yes, please do. I'm not impressed by the federal statute. [Laughter]

MR. VON HERZEN: Mr. Chairman, members of the Conference, I don't know how many here are familiar with the United States Pharmacopoeia or the official Homeopathic Pharmacopoeia or the official Formulary, but I have had some

occasion to examine those particular books, and the way we define a drug in subsection (j) on page 2 can create considerable problems. We define "drug" as a substance "recognized in the official United States Pharmacopoeia". It just happens that the Pharmacopoeia includes such substances as glycerine, water, air, and many other substances--I don't have one with me--which are in ordinary household use.

Now, it seems to me that in defining "drug",if we are going to include everything that is, as we say, recognized in the official United States Pharmacopoeia, then we should say, perhaps, "drug" means substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia, or official National Formulary. This would have meaning, and would not place the various states and persons who are subjected to whatever the word "drug" means, other than the substances that we have outlined in a later section of the Act, subject to those things that are in ordinary household use, and it seems to me that for clarity we have to do something like that.

MR. VAUGHAN: May I say, Commissioner, two things?

The first would be that "drug" is, of course, the very beginning of the definitions which, through other definitions and other provisions, leads subsequently to control.

My initial reaction is that the problem may not be quite as grave as you suggest. I wonder if we could consider your suggestion, and respond to it a little later.

MR. VON HERZEN: I think I would be satisfied if it were adequately covered in a comment, so that the substances that are used in ordinary household use do not become a "drug" simply by virtue of the fact that we have this definition here.

CHAIRMAN DAVIS: Any other questions on Article I? [No one responded.]

If not, we will proceed to Article II, and I notice that later, starting on page 11, a long list of things. It looks to me like they are tongue twisters, and I would like to suggest that we omit the reading of those long lists. Your eye can run down, and I'm sure you are all thoroughly familiar with them.

MR. VAUGHAN: I so move. [Laughter]

SECTION 201. [Authority to Control.]

(a) The [appropriate person or agency] shall administer the provisions of this Act and may add, delete or reschedule all substances enumerated in sections 204, 206, 208 or 210 of this Act pursuant to the procedures of [insert appropriate State administrative procedures code section]. In making a determination regarding a

substance, the [appropriate person or agency] shall consider the following:

(1) the actual or relative potential for abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) state of current scientific knowledge regarding the substance;

(4) the history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) the risk to the public health;

(7) the potential of the substance to produce psychic or physiological dependence liability; and

(8) whether the substance is an immediate precursor of a substance already controlled under this Article.

(b) After considering the above factors, the [appropriate person or agency] shall make findings with respect thereto and shall issue a rule controlling the substance if he [it] finds that the substance has a potential for abuse.

(c) If the [appropriate person or agency]

designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) Where any substance is designated as a controlled dangerous substance under Federal law and notice thereof is given to the [appropriate person or agency], the [appropriate person or agency] shall similarly control the substance under this Act after the expiration of 30 days from publication in the Federal Register of a final order designating a substance as a controlled dangerous substance or rescheduling a substance, unless within that 30 day period, the [appropriate person or agency] objects to inclusion or rescheduling. In that case, the [appropriate person or agency] shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the [appropriate person or agency] shall publish his [its] decision, which shall be final unless altered by statute. Upon publication of objection to inclusion or rescheduling under this Act by the [appropriate person or agency], control under this Act is stayed until the [appropriate person or agency] publishes his

[its] decision.

CHAIRMAN DAVIS: Any comments on Section 201? [There were none.]

If not, we will proceed to 202.

MR. VAUGHAN: There are several sections here that are missing titles. They will be supplied.

SECTION 202. The controlled dangerous substances listed in the schedules in sections 204, 206, 208 and 210 are included by whatever official name, common or usual name, chemical name, or trade name is designated.

CHAIRMAN DAVIS: Any comments on Section 202? [There were none.]

MR. VAUGHAN:

SECTION 203. The [appropriate person or agency] shall place a substance in Schedule I if he [it] finds that the substance:

(1) has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States; or lacks accepted safety for use in treatment under medical supervision.

CHAIRMAN DAVIS: Any comment on Section 203? [No one responded.]

MR. VAUGHAN:

SECTION 204.

(a) The controlled dangerous substances listed in this section are included in Schedule I.

Mr. Chairman, may I omit the introductory language, or would you like that read?

CHAIRMAN DAVIS: Well, read just (b), and then let's skip the other.

MR. VAUGHAN: Fine.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

The specific listing then carries through line 49 on page 12.

MR. DUNHAM: This is merely a question for information. In Section 201 on page 8 you list the standards that the administrator is to use when he adds, deletes, or reschedules, as the case may be, and I assume that means that people can object to adding, deleting, or resheduling, on the ground that it didn't follow the standard. Is anyone able to object, as this Act is structured, to the initial listing in Section 204, that these substances are included in Schedule I, if the

administrator makes no effort to add, delete, or rearrange?

MR. VAUGHAN: No, sir. These would be listed by statute. This would not be an administrative decision, subject to the Administrative Procedure Act.

MR. DUNHAM: So what we are saying--this is just so I understand what we are doing--is that by statutory fiat we are saying these substances meet all the standards on page 8?

MR. VAUGHAN: That's certainly the implication. Let me say again, these are, of course, identical to the federal statutory schedules.

CHAIRMAN DAVIS: Just go ahead with (c) and (d), without reading the individual compounds.

MR. VAUGHAN:

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

Again, a listing follows, which carries over through line 77 on page 13.

CHAIRMAN DAVIS: Is (d) exactly like (c) was? I suggest we omit, then, the reading of (d). It is exactly like (c); and that will carry it through line 100 on page 14.

Any questions on Section 204? [There were none.]

MR. VAUGHAN:

SECTION 205. The [appropriate person or agency] shall place a substance in Schedule II if he [it] finds that the substance:

(1) has high potential for abuse;

(2) has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) abuse may lead to severe psychic or physical dependence.

CHAIRMAN DAVIS: Any comment on Section 205? [There was none.]

MR. VAUGHAN:

SECTION 206.

(a) The controlled dangerous substances listed in this section are included in Schedule II.

(b) Any of the following substances except those narcotic drugs listed in other schedules whether produced directly or indirectly by exyraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, except that these substances shall not include the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances do not include decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

Again, a list follows which carries through line 61 on page 17.

CHAIRMAN DAVIS: Any comments on Section 206?

MR. ABRAMS: Mr. Chairman, is it possible to give a

short description of what the difference between them is?

CHAIRMAN DAVIS: I'm not sure that we understood your question.

MR. ABRAMS: Well, the difference between Schedule I and Schedule II--is there some short explanation of that?

MR. SONNENREICH: Basically, what we have done--or, rather, what the scientific people have done--is that they have taken a list of all the drugs that are presently controlled, and that includes not just the drugs by name, but the derivatives of the drugs, the isomers, et cetera, and decided,first, to pick them out, instead of classifying them in generic terms, and specifically put them down in the schedules.

The first schedule, basically, deals with opioids, opiates, and the hallucinogenic drugs. That's your first schedule. These are the drugs that include such things as LSD, marijuana, peyote, ketobemidone, the hallucinogens, and narcotics that have no medical use presently in the United States.

Now, in the second schedule what have been bracketed together are, basically, narcotic drugs that are similar to the drugs in Schedule I, except they do have medical use in the United States, drugs like morphine, drugs like methadone, and a whole series of other drugs that have established use in

the United States and are so designated by the Federal Food, Drug and Cosmetic Act and the Food and Drug Administration.

When you get into the third schedule, what you are dealing with is drugs that are essentially what they call the depressant and the stimulant drugs. These are drugs such as your barbiturates or amphetamines, your diet pills, your sleeping pills, your sedatives, hypnotics, some tranquilizers, and some narcotics that by international treaty have been designated in a separate category.

So the difference, basically, between the third schedule and the second schedule is that these drugs have wide acceptance in Schedule III, so that the restrictions are far less on the actual use of these drugs, because they are commonly used.

When you get to Schedule IV, you are talking about what we call exempt narcotic preparations, which are essentially drugs that are allowed to be sold over the counter that contain some narcotic in combination with other drugs. These are your cough syrups--elixir of terpin hydrate with codeine, for instance--the entire span of cough syrups. Those drugs are not required by federal law to be prescriptions items, so they were put in that fourth schedule.

So, really, what we are talking about is, from the

top schedule you have drugs that have no accepted medical use in the United States for treatment--not for research; they can be researched, but not used on human beings as a treatment modality.

Schedule II are the narcotics, basically; III is your birbiturates, and so forth; and your last section is the over-the-counter items.

MR. DUNHAM: That is the theory of the classification. Now, what are the differences in the consequences? Are the penalties greater if you dispense wrongfully a drug in I as against II?

I would just like to get the general picture of what difference it makes to the citizen who is charged with violating some kind of rule as to one of the drugs.

MR. VAUGHAN: May I say, Commissioner, that the schedules have a bearing both on regulation and, to a certain extent, on penalties. We will be coming to that, and I think we can best see it when we reach those points.

MR. VON HERZEN: Could I ask a further question, just for clarification?

What have you done with the proprietaries, such as substances that contain paregoric, for example, and these cough syrups that contain codeine that are proprietary and are

sold over the counter in many states--possibly not all states?

MR. SONNENREICH: They are included--paregoric is included, and all the cough syrups, the exempt narcotic cough syrups--included in Schedule IV, which is over-the-counter.

Now, some states do require that certain of these cough syrups be sold on prescription, which this schedule would permit, but the Food and Drug Administration has the control over designating minimum standards. You can always exceed those standards; but all those cough syrups are included, with the exception of the dextromethorphan, which is a substance that is not included under federal law as subject to control, and there are certain cough syrups which are not included, such as the Vick's Formula 44, and things like that.

MR. LANGROCK: Living quite close to Canada, as I do, I find that there are various philosophies for, say, the use of marijuana. As many of you know, marijuana is being considered for a revision.

I don't suppose that in this Conference we should undertake evaluation of the use of marijuana in this country today. It would seem to me, however, that there are a great many people who feel entirely differently than the federal narcotics people on the treatment of marijuana.

I think what I would like to see in this Act is a

very simple note in the comments indicating that, because of the present state of the art in this field, these lists are the way they are, but that the Conference is not taking any particular stand on the relative merits of any particular drug from the scientific standpoint of being placed in this list; and I so move, that that note be put in.

CHAIRMAN DAVIS: Well, I understand all you are suggesting is a comment. You are making a suggestion to the Committee.

MR. LANGROCK: I move that the comment be made. The basic purpose is to flag the situation that we are not making a value judgment on the actual use of any one of these narcotics. We are not scientists. We don't know their effects. I would hate to see us merely pass an Act which says these should be prohibited.

I can understand in the present state of the art using these in the drafting of it, but I don't think we should make a value judgment on the drugs themselves.

CHAIRMAN DAVIS: We are bound to be evaluating the use of a drug when we are prohibiting, or placing penalties.

I realize there is quite a controversy on marijuana. Would you like to comment on that?

MR. VAUGHAN: Well, I would begin, I guess, by saying

that, first of all, this Act provides great administrative flexibility to move substances within schedules, to add substances to schedules, and to delete substances from any schedule when the state of the art becomes such that we understand something different from what we now understand about a drug.

I would further say that with regard, for example, to the Schedule I substances, I think we have carefully refrained from saying anything particularly onerous about any of the Schedule I substances, including marijuana. We have not said anything more than, going back to page 10, subunit (2), beginning in line 5, that the substance--and this is the test which applies to listing other things in that schedule; it does not specifically apply to the statutory enumeration--that Schedule I substances have no accepted medical use in treatment in the United States.

I think that's the careful phraseology, Commissioner Langrock, that you seem to hope for.

MR. LANGROCK: I'm not arguing the phraseology of the Act. I have many friends who feel that marijuana should be legalized. I personally feel that the legislative history in regard to marijuana and inclusion in the Federal Act indicates an improper handling of the field.

I would be willing to go for this Act in the present state and knowledge of the art, as we call it. However, I do not wish this Conference to make a value judgment that it should be a crime to possess marijuana. I think this is something which we can put in the Act for uniform purposes, but I don't think we are in a position to make this scientific judgment. It has been made all around us, but I don't want to see this Conference start to make that judgment.

CHAIRMAN DAVIS: How do you suggest that we can prohibit its use and create a penalty for its use, and still say we have exercised no judgment about it?

MR. LANGROCK: Simply by a note that we are including marijuana in this list, as a Conference, because of the present state of the art, but that we are not placing a value upon the use of marijuana, and whether or not it should be included in this list--just a simple notation flagging this as it relates to marijuana.

MR. VAUGHAN: In preliminary discussion, Commissioner Langrock, it seems acceptable to those members of the Committee that I have been able to talk to, to add such a comment. We will either do it or let you know that we will not.

MR. FRASER: Mr. Chairman, may I please say---

CHAIRMAN DAVIS: Wait a minute. I think Commissioner

Barrett came up first.

MR. FRASER: I'm sorry. I'll wait.

MR. BARRETT: Mr. Chairman, I suggest that a comment of this kind is wholly inappropriate, because the custom and usage of this Conference is that comments are designed to be an aid to the court in the interpretation of the Act, and not to express that we have done so and so, but we don't believe in it.

MR. FRASER: Well, I certainly subscribe exactly to what Commissioner Barrett has said. It's almost like condemning embezzlement, and putting a comment that possibly under some circumstances a little embezzlement might be in the future acceptable. [Laughter]

MR. RUUD: May I add that I can't find the provision which authorizes the administrator to move a listed drug from one schedule to another. If I understood the comment, that's possible.

MR. VAUGHAN: Page 8, Section 201, subsection (a): "The [appropriate person or agency]...may add, delete, or re-schedule all substances enumerated in sections 204, 206, 208 or 210". Those are the four schedules.

MR. THOMAS: Let me make one comment on what I understand is the point Commissioner Langrock has made.

We have, as I indicated earlier, listed these drugs as the federal law specifies. I would have no objection to some statement in the comment that that listing has been followed. I think that is implicit in the Act at this time. However, I would not buy a specific reference to marijuana, and I would certainly be opposed to singling it out in that respect.

MR. LANGROCK: Just to flag that there is no value judgment on the use of the drug.

MR. VON HERZEN: I have some difficulty in accepting what the Chairman indicated would be the method of placing into or taking out of the list by an agency or a person any particular substance.

I have no support for marijuana. In fact, I think personally that it should be in here, and is a dangerous substance, whether it affects the body as much as we think or not; but in California we have the administrative addition or deletion from a list of substances, but it is surrounded with safeguards of requirement for a notification of some sort, and the procedures that are set out in having some sort of a hearing with relation to it. Now, possibly this is in the Act some place. Is it?

MR. VAUGHAN: Yes, sir.

MR. VON HERZEN: Then let me also comment, if I may, on the Chairman's statement.

CHAIRMAN DAVIS: Excuse me just one moment. That is in the Act in 201. It refers to the State administrative procedures code. They do this in accordance with the rule-making power, and then these items that are listed in 201 are factors that must be considered in making the determination.

MR. VON HERZEN: Fine! Fine! I am having some trouble with the terminology expressed by the Chairman that a given substance may have current medical use in the medical profession. My brother is a physician. My father was a surgeon, and I have some acquaintanceship with these matters, and there are many, many substances--just innumerable substances--that are ordinary substances not requiring a prescription that are used by the medical profession for medical purposes. I hate to make a nuisance of myself in this respect, but let me give you an extreme example.

I was diagnosed a while back as not drinking enough water, and the result was that I had to put a pitcher of water in my office and drink a certain number of glasses per day of water. Within the definition mentioned by the Chairman, this becomes a substance subject to the Act because it has medical use.

CHAIRMAN DAVIS: Excuse me. I don't understand that at all, Commissioner. He said that the first schedule--Schedule I--was certain types of drugs that had no medical value, and then II did, and on down, but he doesn't say that everything that has medical value is included as a drug.

MR. VON HERZEN: I'm afraid, sir, that he does. On page 14, Section 205, sub (2) says in so many words "has currently accepted medical use in treatment in the United States".

MR. VAUGHAN: Would you say that water has a high potential for abuse?

MR. VON HERZEN: You use the word "or". If you would use the word "and", I believe I'd be satisfied.

MR. VAUGHAN: There are three conditions in the Section. The second one is followed by "; and". I hope that makes it clear that a substance must meet the conditions of all three subunits.

MR. VON HERZEN: Perhaps it does. Perhaps it does. I wanted to be sure that we were careful in this field.

MR. TOWNSEND: Mr. Chairman, in deference to the suggestion from the gentleman from Vermont, I would like to ask the Committee this question: is it not true that alcohol is more dangerous than marijuana, medically speaking? Could I

get an answer on that?

The young people today are asking that question, and some of these people may be omniscient on this point, but I certainly am not.

MR. VAUGHAN: As a demonstration of my nonomniscience, may I say that, since I never went to medical school, I would be unqualified to say which is more medically dangerous than the other. I suspect that's so of most of us in this room.

CHAIRMAN DAVIS: I doubt very much if there is any member of the Committee that is qualified to answer, but if they are, we would be glad to---

MR. TOWNSEND: The record will show, then, that alcohol may be as dangerous as marijuana.

MR. THOMAS: The medical experts that the Committee had the opportunity of talking with--those in high places with the American Medical Association--have advised us to the contrary. We are convinced in our thinking that there is a lack of research on marijuana, that we don't yet have the final answers.

The same thing could be true with alcohol, but at this point we would not want to go beyond what we have been told in that respect.

MR. TOWNSEND: Thank you.

CHAIRMAN DAVIS: Any further comments on 207?

MR. VAUGHAN: I guess, then, that we have reached page 22, Section 209.

CHAIRMAN DAVIS: Schedule III was where we stopped. I think we have not read all of 208, have we? Is there any objection to not reading all of 208? The different derivatives, except for the different names of the drugs, are practically the same until you get down to, perhaps, (e) of that. Why don't you read (e), beginning on page 19?

MR. VAUGHAN: Back to page 19, then.

(e) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(1) Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit---

MR. MILLER: I would suggest that, unless some member of the Conference wants these very technical terms read, that you dispense with the reading.

CHAIRMAN DAVIS: Is there any objection to skipping over to Section 209 at the top of page 22? [No one responded.]

Hearing none, we will go to page 22, Section 209.

MR. VAUGHAN:

SECTION 209. The [appropriate person or agency] shall place a substance in Schedule IV if he [it] finds that the substance:

(1) has low potential for abuse relative to the substances listed in Schedule III;

(2) has currently accepted medical use in treatment in the United States; and

(3) has limited physical dependence and/or psychological dependence liability relative to the substances listed in Schedule III.

CHAIRMAN DAVIS: Any comments on Section 209?

MR. BRAUCHER: Mr. Chairman, just a point of information.

I think I'm getting so I begin to understand these schedules, but I find it a little mystifying. Do I understand that the administrator would have the authority to add ordinary alcohol to one of these schedules, or is it already excluded?

CHAIRMAN DAVIS: That is expressly excluded by the definition of "drug" in Section 101. Tobacco also, if you are interested in that, is excluded. [Laughter]

MR. VAUGHAN: At the top of page 2, lines 21 to 23. I think that takes care of that, Commissioner.

SECTION 210.

(a) The controlled dangerous substances listed in this section are included in Schedule IV.

(b) Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

CHAIRMAN DAVIS: We're going to eliminate the reading on the top of page 23, which is highly technical.

Any comments concerning Section 210? If not, we will proceed with Section 211.

MR. VAUGHAN:

SECTION 211. [Republishing of Schedules.] The [appropriate person or agency] shall revise and republish the schedules semiannually for 2 years from the effective date of this Act, and thereafter annually.

CHAIRMAN DAVIS: Any comments on Section 211? [There were none.]

This completes Article II. I'm not trying to rush you. Are there any questions now concerning Article II?

MR. CUNNINGHAM [N.D.]: [illegible] With respect to 211,

I notice in the note here, which I haven't had a chance to read yet, there is mention of its actual or relative potential for abuse. Is potential for abuse defined in the Act? Do we know what kinds of things we are anxious to prohibit? Is it the habit-forming characteristics, or the tendency of a particular substance to make children work hard and be attentive and docile in school, and that kind of thing? What is the potential for abuse?

MR. SONNENREICH: Perhaps I can help you with that, Commissioner. These words were arrived at by the Scientific Advisory Committee and by the Department of Health, Education and Welfare back in 1965, when the Drug Abuse Control Amendments of 1965 were passed. We have shown you the criteria of potential for abuse in the comment, as to what kind of things constitute potential for abuse. We have never had any test of that until last year, when the Supreme Court denied certiorari in a case, Carter Wallace v. Commissioner of the Food and Drug Administration, and I refer you to the language that was lifted and taken out of the Committee reports from the Congress on page 25, which talks about a substantial potential for the occurrence of significant diversion of drugs from legitimate drug channels or significant use by individuals contrary to professional advice, or the taking of drugs in substantial

amounts, sufficient to create a hazard to their health or to the safety of other individuals, or of the community, or taking the drug outside of getting medical advice or a medical prescription.

There are, basically, four criteria here that establish and tie up what is potential for abuse. It seems to be the one standard that the scientific community could get together on, to determine which drugs would be considered included and which drugs would not, and there have been meetings to try and further pinpoint scientifically the methodology for determining potential for abuse. The easiest, of course, is when you have a pharmacological effect where the scientists can say: "Clearly this drug is similar to another drug that has this kind of effect",like a hallucinogenic effect.

Does that help?

MR. BARNETT: I see you don't have things listed such as glue in here. What do you do with those kinds of things, and all the kinds of substances that some of the people are coming up with now?

CHAIRMAN DAVIS: Would you comment on glue sniffing?

MR. SONNENREICH: If the substance within the glue were listed--and some of the substances might be listed. I am not a chemist. It would never be listed as glue, but if

there were certain substances in certain glues that created a problem, what would happen is that they would be specifically listed by chemical name, and either the company would then have to comport with the record-keeping provisions, or the company would have to find a substitute, and this is exactly what happened in the case of some of your corn syrups which contained controlled substances. They went to another drug.

But the intent is not to include glue as a substance per se, but only the active ingredients, if they are known and if they can be isolated.

MR. ARNOLD: I'm concerned about the classification under Schedule IV, primarily because I don't understand the ultimate result, but insulin would appear to meet the standards of IV in that it has a low potential for abuse--I'm on Section 209--has currently accepted medical use, and there is a physical dependence.

This would suggest to me, then, that insulin could be classed as a Schedule IV drug; and if so, then this would require that it not be dispensed except upon prescription. Also, possession might be---

MR. SONNENREICH: We have not listed it.

MR. ARNOLD: I recognize that you have not listed it, but you have also authorized the agency to do so. Is that not

so?

MR. SONNENREICH: Well, what happens is that part of the purport of this is similarity of substance, and in the schedule what you are talking about is drugs similar to the drugs within the schedule. According to those three criteria alone, insulin could be put in, but you have to meet the other test of whether it is a depressant, stimulant, or hallucinogenic drug that has an effect on the central nervous system or is a narcotic or opiate.

MR. ARNOLD: I think it is likely to be a depressant in over-use.

MR. SONNENREICH: Well, I'll be honest with you. The question has not arisen. There's no question that it is a prescription item. The Food and Drug Administration does control it. But the intent is that there would also have to be a showing of abuse.

MR. ARNOLD: No, they do not require it to be distributed by prescription only.

MR. SONNENREICH: I'm not familiar with insulin per se.

MR. MILLER: Mr. Chairman, I believe the intent of this Section is to merely declassify into a lower schedule something that would fit in an earlier schedule, and if

something didn't fit in an earlier schedule, this provision would not be applicable, really. Am I right or wrong on that?

CHAIRMAN DAVIS: I understand that under Section 201 the administrator, by following the criteria set out there and the rule-making procedure out of the State Administrative Procedure Act, could add to, delete, or reschedule.

MR. THOMAS: One more comment on that.

We have also, I think, to take care of your situation--we certainly did not want to list things that shouldn't be listed. We didn't feel like that was our duty; and as suggested in the comment, with the aid and assistance of a Scientific Advisory Committee in the State, the administrator would reach those decisions.

MR. ARNOLD: I just want to be sure that you don't put a diabetic in the position, if he or she is transitory, and they go from one state to another, where they might discover that they cannot buy their insulin because they don't have a physician to prescribe it for them in that particular state.

MR. LAMB: Just a minor point. In 207, on page 17 you have your three criteria there, potential abuse and medical use, and then the effect. That's on page 17.

Now, if you will turn to page 22, Section 209, you

will find that (1) and (2) are identical. Why is (3) different? Is there any difference?

CHAIRMAN DAVIS: Commissioner, were you in when the explanation was made of the difference in the four schedules?

MR. LAMB: Yes, sir.

CHAIRMAN DAVIS: Well, as I understand it, these are grouped in schedules.

MR. LAMB: That's not my point, sir. There are three criteria.

MR. THOMAS: Let me see if I can't give you a quick answer.

On page 17, "(1) has potential for abuse less than the substances listed in Schedules I and II". On page 22 it's limited to those listed in Schedule III. We are not talking about the I and II drugs.

MR. LAMB: And if you will note (1) on page 17 and (1) on page 22, they are the same.

MR. THOMAS: No, sir. No, sir. Read line 6 on page 17. It says "I and II". Line 6 on page 22 is "Schedule III".

MR. LAMB: What I mean is that the language is the same.

MR. THOMAS: But the Schedules are different.

MR. LAMB: My question is: why is (3) phrased differently? I was wondering if there was any particular reason for that--(3) on 17 as opposed to (3) on 22. My question is: is there any significant reason why they are separate?

MR. THOMAS: We're talking in Schedule IV about those listed in III.

CHARMAN DAVIS: I understand, Commissioner Lamb, that these are entirely different substances, and have somewhat different characteristics and different effects.

MR. LAMB: Right, but you have set up three things that must happen. One is the potential abuse. The second is the accepted medical use. The third is the psychological or physical effect. I'm just asking why they aren't,in general, the same language. That's all.

MR. SONNENREICH: Maybe I can answer that.

The reason we talk on page 17, line 9, to "abuse may lead to moderate or low physical dependence or high psychological dependence" is because these are items that are prescription items. You also have included in here narcotics, not just stimulants and depressants. The medical people felt that that would be a good standard not relative to Schedules I and II, and that's why it's been excluded, and not saying

"moderate or low" relative to Schedules I or II.

MR. LAMB: Thank you. I think that answers it.

MR. BRAUCHER: Mr. Chairman, I have been trying to follow this reclassification authority on page 8 and I heard the Chairman read it a little differently from the way I read it, and if that's what's intended, it would help me.

It says: "The [appropriate person or agency] shall administer the provisions of this Act and may add, delete or reschedule all substances enumerated."

Now, I heard you, I think, say that that was meant to say "add to all substances enumerated". I think it has to mean that. You have a new substance that you haven't heard of yet, but if that's true, then the answer that was given me earlier as to alcohol is probably not reliable, because alcohol is defined as not a controlled dangerous substance; but if you have authority to add to the list of controlled dangerous substances, I think-- I'm not very worried about this. If some administrator adds alcohol to this list, we'll just get a new administrator real quick. [Laughter]

MR. LANGROCK: I'm worried about what Commissioner Braucher has said. I think the first thing we are doing is doing a fix. We say what a controlled dangerous substance is, and we exclude alcohol, and we exclude tobacco. Obviously,

these are dangerous substances.

I would suggest that what we really do in this Act is to strike from Section 101 (e) the second sentence, which is: "The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used", et cetera, and allow those substances to be defined as dangerous substances, and then put a subsequent section in which says this Act expressly allows the use of these specific substances--distilled spirits, wine, malt beverages, or tobacco--pursuant to state regulation.

I think this has two merits. First, it takes care of the problem of moving in and out of the list and it allows the state regulation of any specific items that come in and out of the list; but also, I think, it does away with the hypocrisy that we find in the use of alcohol in our society, as opposed to the use of certain other drugs.

MR. THOMAS: I think we can take care of that simply by moving that sentence at the top of page 2 into 201 (a) on page 8, and just expressly exclude those items from the substances that may be enumerated.

MR. LANGROCK: I don't think it should be excluded from the substances. I think what we should simply say is what the truth of the matter is, that alcohol is a dangerous

drug, but because of the social valuation that alcohol is a worthwhile thing, at least since the repeal of the Prohibition Amendment, that we are going to allow it pursuant to certain regulations, and say what we are doing, and not play games by defining alcohol as a non-dangerous substance.

CHAIRMAN DAVIS: Any further comment?

[Calls for the question]

CHAIRMAN DAVIS: Did you make a motion, Commissioner?

MR. LANGROCK: Yes, I did, sir.

CHAIRMAN DAVIS: Would you mind restating it once more?

MR. LANGROCK: The motion is, really, quite simple. It is to delete the last sentence of 101 (e) on page 2, so that there is no exclusion in that section, and then to instruct the Committee to write another section expressly permitting the use of these various substances pursuant to state regulation.

MR. VAUGHAN: Mr. Chairman, I think that the Committee is generally agreeable to that. The point raised is a good one. Logically, we have not excluded it from the Act, as we intended. If we are agreeable to just moving it over and tinkering with the language as necessary to make it not subject to regulation under the Act; if that would take care

of the matter---

CHAIRMAN DAVIS: Would that satisfy you, Commissioner?

MR. LANGROCK: If it doesn't I will renew my motion. Thank you, sir.

CHAIRMAN DAVIS: Any further comments on Article II before we go to Article III? [There were none.]

If not, we will move to Article III.

MR. FORD: ARTICLE III, Regulation of Manufacture, Distribution and Dispensing of Controlled Dangerous Substances.

SECTION 301. [Rules and Regulations.] The [appropriate person or agency] may promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled dangerous substances within this State.

CHAIRMAN DAVIS: Any comment on 301? [There was none.]

MR. FORD:

SECTION 302. [Registration Requirements.]

(a) Every person who manufactures, distributes, or dispenses any controlled dangerous substance within this State or who proposes to engage in the manufacture, distribution or dispensing of any controlled dangerous substance within this State, shall obtain annually a registration

issued by the [appropriate person or agency] in accordance with his [its] rules.

(b) Persons registered by the [appropriate person or agency] under this Act to manufacture, distribute, dispense, or conduct research with controlled dangerous substances are authorized to possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Article.

(c) The following persons need not register and may lawfully possess controlled dangerous substances under this Act:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled dangerous substance if he is acting in the usual course of his business or employment;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled dangerous substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled dangerous substance pursuant to a

lawful order of a practitioner.

(d) The [appropriate person or agency] by rule may waive the requirement for registration of certain manufacturers, distributors, or dispensers if he [it] finds it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled dangerous substances.

(f) The [appropriate person or agency] may inspect the establishment of a registrant or applicant for registration in accordance with the [appropriate person or agency's] rule.

CHAIRMAN DAVIS: Any comment on Section 302?

MR. DAY: I don't think you intended that doctors had to be registered, but I don't see that it's covered in the language of the Act. He will be dispensing, I presume.

MR. FORD: Doctors must register under federal law, and we did intend that they be registered under state law.

MR. DAY: So they will have to be registered under these provisions?

MR. FORD: Yes, sir.

CHAIRMAN DAVIS: Any further comments? [There were

none.]

MR. FORD:

SECTION 303. [Registration.]

(a) The [appropriate person or agency] shall register an applicant to manufacture or distribute controlled dangerous substances included in Sections 204, 206, 208 and 210 of this Act unless he [it] determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the [appropriate person or agency] shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled dangerous substances into other than legitimate medical, scientific,or industrial channels;

(2) compliance with applicable State and local law;

(3) any record of convictions of the applicant under Federal and State laws relating to the manufacture, distribution, or dispensing of such substances;

(4) past experience in the manufacture or distribution of controlled dangerous substances, and

the existence in the applicant's establishment of effective controls against diversion; and

(5) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture and distribute controlled dangerous substances in Schedule I or II other than those specified in the registration.

(c) Practitioners shall be registered to dispense substances or conduct research with substances in Schedules II through IV if they are authorized to dispense or conduct research under the law of this State. The [appropriate person or agency] need not require separate registration under this Article for practitioners engaging in research with non-narcotic controlled dangerous substances in Schedules II through IV where the registrant is already registered under this Article in another capacity. Practitioners registered under Federal law to conduct research in Schedule I substances are permitted to conduct research in Schedule I substances within this State upon furnishing the [appropriate person or agency] evidence of that Federal registration.

(d) Compliance by manufacturers and distributors

with the provisions of the Federal law respecting registration (excluding fees) entitles them to be registered under this Act.

CHAIRMAN DAVIS: Any comments on Section 303? [There were none.]

MR. FORD:

SECTION 304. [Denial, Revocation, Suspension, or Refusal of Renewal of Registration.]

(a) A registration under Section 303 to manufacture, distribute, or dispense a controlled dangerous substance may be suspended or revoked by the [appropriate person or agency] upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under this Act;

(2) has been convicted of a felony under any State or Federal law relating to any controlled dangerous substance; or

(3) has had his Federal registration suspended or revoked and is no longer authorized by Federal law to manufacture, distribute, or dispense controlled dangerous substances.

(b) The [appropriate person or agency] may limit revocation or suspension of a registration to the

particular controlled dangerous substance with respect to which grounds for revocation or suspension exist.

(c) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the [appropriate person or agency] shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the [appropriate person or agency] at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted in accordance with [insert appropriate administrative procedures] without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(d) The [appropriate person or agency], without an

order to show cause, may suspend any registration simultaneously with the institution of proceedings under subsection (c), if he [it] finds that there is an imminent danger to the public health or safety. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the [appropriate person or agency] or dissolved by a court of competent jurisdiction.

(e) If the [appropriate person or agency] suspends or revokes a registration, all controlled dangerous substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled dangerous substances may be forfeited to the State.

(f) The [appropriate person or agency] shall promptly notify the Bureau of all orders suspending or revoking registration and all forfeitures of controlled

dangerous substances.

CHAIRMAN DAVIS: Any comment on Section 304?

MR. RICHTER: Mr. Chairman, in the light of all our recent United States Supreme Court decisions on searches and seizures, and what not, how do you get these substances placed under seal? It's a matter of inquiry.

CHAIRMAN DAVIS: That's coming up later, they say. Would you mind holding your question until we get to those sections?

[Mr. Richter nodded his head in assent.]

MR. GRAHAM: I'd like to go back to Section 303 for just a moment, if I might, to subsection (d), which provides that compliance with the provisions of the Federal law entitles manufacturers and distributors to be registered within the state, and then part (a) of 303, which entitles the state administrator to deny registration if the manufacturer is not in compliance with applicable state and local law.

I'm wondering if, in fact, a manufacturer who is not in compliance with applicable state and local law must still be registered, if he is entitled to registration by reason of the Federal registration.

MR. FORD: We are attempting to make the registrations complementary, so that if he is registered by Federal

law, by virtue of that very fact he is registered by state law to begin with.

Now, then, if the state administrator wants to make some change, he serves upon the registrant a show cause order, and then goes to administrative hearing within the state. It was the intent of the Committee--the primary thrust of this was to avoid for the applicant the trouble and the expense of dual hearings for registration generally, but to allow the state the flexibility of having their own standards and requiring subscribance to those standards in a hearing.

I hope I have made myself clear.

MR. MEANS: In the event that revocation or forfeiture of the dangerous substance to the state is permissive, shouldn't the alternatives to forfeiture be spelled out at this point? Otherwise, they will be retained,or sold, or whatever.

MR. FORD: If my memory serves me correctly, there are certain substances which must be forfeited to the Federal Government, and that's the reason the language is permissive, rather than mandatory. And forfeiture, again, will be treated later.

CHAIRMAN DAVIS. Any further comments? [There were none.]

MR. FORD:

SECTION 305. [Records of Registrants.] Persons and establishments registered to manufacture, distribute, or dispense controlled dangerous substances under this Act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of Federal law and with such additional rules as may be issued by the [appropriate person or agency].

CHAIRMAN DAVIS: Any comments on Section 305? [There were none.]

MR. FORD:

SECTION 306. [Order Forms.]

(a) Controlled dangerous substances in Schedule I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of Federal law respecting order forms shall be deemed compliance with this Section.

MR. BURDICK: I realize you are trying to move along, but I have a thought here on Section 304. I'm wondering why you do not permit the registration to be denied. You have "suspended or revoked" in line 4, and then you talk about "denying, suspending or revoking" in subsection (c). Shouldn't there be authority to deny the application in the first instance in subsection (a) of 304?

MR. FORD: Commissioner, Section 303 deals with denial. Section 304 deals with revocation and suspension. Perhaps we don't understand some aspects of this thing.

MR. BURDICK: Sub (c) on line 22 provides for "an order to show cause why the registration should not be denied, revoked, or suspended."

MR. SONNENREICH: The reason that it's there is that the adjudicative proceeding for either the denial of a registration initially or a denial of renewal, or suspension, or revocation, would follow the same adjudicative proceeding; that is, the putting forward of the show cause order, or whatever the proceeding is. That's why the denial is there, although the criteria in 304 (a) relate, really, to revocation and suspension.

When we are talking about denial for the initial application, the criteria that are applicable to it are in Section 303, but all of them would flow into Section 304 (c), because that is the actual administrative proceeding.

MR. BURDICK: I'm having some difficulty following it, because the head note to the Section is "Denial, Revocation, Suspension, or Refusal of Renewal of Registration."

MR. VAUGHAN: This is just a matter of section arrangement, isn't it? We could consider it and---

CHAIRMAN DAVIS: Commissioner Burdick, would it be satisfactory if the Committee reviewed that, and either corrected the sub-heading or added the word "revoke" in there?

MR. BURDICK: It probably would, but in the present form it seems very confusing to me.

CHAIRMAN DAVIS: The Committee will take those suggestions under consideration.

MR. VESTAL: I think in the Section meeting we decided that we would not include that on the denial of the original application--isn't that right?--that there would be no requirement of a show cause on a denial there, because the man has applied for the registration there. I don't think this is consistent with the Section action on this.

MR. THOMAS: Let us take another look at it. I think you may be right, but let us review it.

MR. MILLER: You don't need the (a) in Section 306.

CHAIRMAN DAVIS: Any other comments? [There were none.]

If not, we will proceed to Section 307.

MR. FORD:

SECTION 307. [Prescriptions.]

(a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate

user, no controlled dangerous substance in Schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the [appropriate person or agency], Schedule II drugs may be dispensed upon oral prescription reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of Section 305 of this Act. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled dangerous substance included in Schedule III which is a prescription drug as determined under [appropriate State statute], shall not be dispensed without a written or oral prescription. Such prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(d) A controlled dangerous substance included in Schedule IV shall not be distributed or dispensed other than for a medical purpose.

CHAIRMAN DAVIS: Any comments on Section 307?

MR. MEANS: Isn't "prescription" a term of sufficient technical variation and ambiguity, and so on, that it should be included in the list of definitions?

MR. FORD: Commissioner, we are advised that there is no definition of "prescription" under federal law. I have always considered a prescription to be a written order of a doctor or a physician to dispense a drug.

MR. SCHWARTZ: Doesn't Schedule IV include proprietary medicines?

If that is so, aren't you providing a subjective test in (d) on page 40? What do you mean, it shall not be distributed or dispensed other than for a medical purpose?

If I go into a drugstore and say I want it for a medical purpose, but I really want to get high, who is going to determine that?

MR. SONNENREICH: The only proprietary drugs that this applies to are those which contain exempt narcotic preparations, and this was put in because it is in the existing narcotic laws, the 1934 and also in the new bill. The intent here is that there is a problem with some people buying it for other than medical purposes, and I'm sure that you are familiar with the requirement under federal law for people who want to purchase these exempt narcotic preparations from

the pharmacist.

So what we are doing is creating a standard that the pharmacist, in effect, cannot distribute those drugs except for a medical purpose, and to do so would be a violation of federal law. That was the intent of that subsection.

MR. SCHWARTZ: But who is to determine whether it's for that purpose? Who determines that?

MR. SONNENREICH: Well, there is a list of what the drug is used for, not in here but in the federal. When a drug comes forward as an exempt narcotic, it's listed what it's for--cough syrup, et cetera. It's not to be used as a substitute for alcohol.

MR. SCHWARTZ: I don't go in with a prescription---

MR. SONNENREICH: Absolutely not.

MR. SCHWARTZ: [continuing]...and I say I want it for a medical purpose.

MR. SONNENREICH: That's right.

MR. SCHWARTZ: That's enough?

MR. SONNENREICH: That's enough unless you have purchased more than X quantity within a 24-hour period. Then another pharmacist can't sell it to you.

MR. DANA: Mr. Chairman, I would like to renew a suggestion made by one of the other Commissioners just a few

seconds ago.

If you will look on page 39 at the beginning of Section 307, lines 4 and 5 say that you need the written prescription of a practitioner. A "practitioner" is defined as broader than a physician.

Now, if you drop down four or five lines to where the previous Commissioner raised his point, line 8 says "dispensed upon oral prescription". It doesn't say "by a practitioner". A druggist reading that in his own state statute, and remembering the normal rule that he can fill oral prescriptions by a doctor, might refuse the oral prescription by a practitioner, and thus destroy the intention of this Act.

At the top of the next page, Section (c) does say "by a practitioner"; and yet on line 17 again it just says "shall not be dispensed without a written or oral prescription."

I think, since "prescription" is not defined, you ought to add "by a practitioner", if that is what you mean.

CHAIRMAN DAVIS: Does the Committee have any objection to that? [No one responded.]

MR. ARNOLD: In regard to page 40, line 16, "appropriate State statute", I'm wondering what would be the situation if a state had no statute dealing with this.

MR. SONNENREICH: Under Section 502 (b) of the Federal Food, Drug and Cosmetic Act there is a minimum standard. If the state doesn't have an applicable statute that would determine what is a prescription drug, then all you would have to do is look to the federal law, because that's the minimum standard.

MR. ARNOLD: Then your Act should so provide, I think.

MR. SONNENREICH: "...upon appropriate State or Federal statute"?

MR. ARNOLD: Yes.

CHAIRMAN DAVIS: Any further comment before we go to Article IV? [There was none.]

If not, we will proceed with Article IV, page 41.

MR. FORD:

SECTION 401. [Prohibited Acts A - Penalties.]

(a) Except as authorized by this Act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled dangerous substance.

(1) Any person who violates this subsection with respect to

(i) a substance classified in Schedule I

or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than [ ], or fined not more than [ ], or both;

(ii) any other controlled dangerous substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than [ ], fined not more than [ ], or both;

(iii) a substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than [ ], fined not more than [ ], or both.

(b) Except as authorized by this Act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than [ ], fined not more than [ ], or both;

(ii) any other counterfeit substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than [ ], fined not more than [ ], or both;

(iii) a substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than [ ], fined not more than [ ], or both.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled dangerous substance unless such substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by the Act. Any person who violates this subsection is upon conviction guilty of a misdemeanor.

CHAIRMAN DAVIS: Any comment on Section 401?

MR. THOMAS: Let me make a couple of preliminary comments before we get into this.

Subparagraphs (a) and (b) of Section 401 follow the schedules, and abuses of dealing or trafficking with the substances, in the decreasing order of the schedules.

When we get over to section (c), we are talking about simple possession of any of the substances, and we have had, as I indicated earlier, spirited debate on this section, with one of our members disagreeing with simple possession being a misdemeanor. There has been a great deal of thought. This has gone back and forth in the Committee. The vote has been the same each time the Committee has voted on it. The Committee has maintained--and the Section did the same thing--that simple possession should be a misdemeanor crime rather than a felony.

I wanted to make that clear, that that has been discussed back and forth. Now, if the Committee of the Whole feels to the contrary about it---

MR. STRAUCH: In 401 (a) it appears to me you are attempting to make this a criminal act within the necessary specific criminal intent, and in the reading of it it seems to me that you make the act manufacture, delivery, or possession, and the intent is only to manufacture or deliver.

In other words, in a hypothetical case, if I merely possess it, there would be no criminal intent spelled out here that would indicate a crime. In other words, I couldn't possess it for my own personal use and be guilty of this, because I didn't want to manufacture or deliver.

CHAIRMAN DAVIS: I understood that (c) would get possession alone and makes it a misdemeanor.

MR. STRAUCH: Well, if you require specific intent to manufacture or deliver---

CHAIRMAN DAVIS: In order to do the crime specified in sub (a).

MR. STRAUCH: Wouldn't it be better to make the manufacturing and delivery with intent one thing, and possession another?

MR. FORD: That's what we have done, Commissioner. In subparagraph (c) on page 42 we deal solely with mere possession. However, in this subparagraph (a) we deal with possession coupled with the second element, intent.

Now, I may possess a great batch of heroin to promote for myself a terrific high. On the other hand, I may possess that great batch of heroin to take out and peddle it to the other members of the Conference who want to get high tonight, and it's the feeling of the Committee that if I am going to peddle the stuff--if I have the intention to peddle it--my guilt is greater than if I am just going to damage myself with it.

And here in subparagraph (a) we deal with the manufacture, with the intent to deliver, or with the manufacture

or with the delivery or with the possession with the intent to deliver. To put it more succinctly, (a) is the pusher, and (c) is the possessor.

MR. RUUD: Mr. Chairman, I reveal my ignorance of the use of drugs by this question, but if you look at 401 (a), it is "possess with intent to manufacture". Then you turn over to a definition of "manufacture" on page 3, and from what I read, one who possesses would in the process of use of at least some of these drugs manufacture, because there would be preparation or compounding or processing.

Now, I appreciate that that's not your intention; that the intention of the draftsmen is to reach, as the Chairman just put it, in subsection (a), the pusher, and I'm very sympathetic with that approach--with a different approach to the person who only possesses for his own use. Do you see my problem?

You have a very broad definition of "manufacture", and when you read the term "manufacture" in its defined sense in subsection (a), you are reaching a lot more than the pusher.

CHAIRMAN DAVIS: Well, I understood they intended to include the intent to manufacture as well as the intent to deliver. The pusher may not do any manufacturing, or he may buy packaging or labeling, or something else.

MR. RUUD: Well, my point is, as I understand it, you do something to the raw material--a user does--simply in the process of preparing it to administer it to himself. I suppose, in the case of marijuana, you do roll it into a cigarette.

Now, if you read the definition of the term "manufacture" the way it is defined in the section on page 3, wouldn't that be preparation of the drug?

MR. MILLIMET: I think the Commissioner is right. If you look on page 4, we eliminate manufacture by a practitioner in two instances, and I think we could add "by a person for his own use" on page 4. Would that satisfy your criticism?

MR. RUUD: Yes. Yes, I think it would. You see, I leave the problem to the Committee. I'm not suggesting anything different from what the Committee wants to do. It's just a drafting problem.

MR. BRAUCHER: Mr. Chairman, I'm on page 42, subsection (c), and I'm thinking about a proprietary drug under Schedule IV, as I understand it, and it's the same kind of problem. It says: "It is unlawful...to intentionally possess a controlled dangerous substance" and that could include the ordinary cough syrup, "except as otherwise authorized by the

Act."

And then I look to see where there is some place where it's authorized for me to have this cough syrup, and I don't see it there. All the other things I saw were prohibitions, and didn't authorize anything.

MR. MILLIMET: That's a good point.

MR. FORD: Commissioner Braucher, I'm advised that if you look on page 40, subparagraph (d)---

MR. BRAUCHER: I read that one and that does not, in my opinion, authorize anything whatsoever. What it does is to prohibit some things, but there is nothing there to say that I can have it. It says "shall not be distributed or dispensed other than for a medical purpose."

Now, I'm not worried about distributing or dispensing. I'm just getting ready to fix up my sore throat.

MR. MILLIMET: I think Commissioner Braucher is right. I think we could correct it by rewording subparagraph (c), and I think we should, because we certainly don't intend to catch somebody just because he has a non-prescription drug, and we should add something, I think, to say that unless such substance was obtained directly pursuant to a valid prescription, or as authorized by law from a distributor, from a pharmacy--that would be an answer probably.

MR. BRAUCHER: Could I suggest the same kind of formula that you were putting back into "manufacture" needs to be put in here? You need affirmative authority for a fellow to do the thing that you mean to permit, unless you are going to say something about prohibitions instead of about authorizing.

MR. BURDICK: I just want to refer back to 304 and 303 for a moment. 304 lists three grounds for suspension or revocation of the application. I don't understand. (1) and (3) are not included in Section 303, and certainly they ought to be the basis for denial of the application in the first instance.

I see no harm in putting that word "denial" in line 4--"denied, suspended or revoked"--for the reasons set forth in clause (2); but those three reasons are not included in Section 303, and certainly furnishing false information in the application ought to be a ground for denial as well as suspension under the Federal Act--ought to be a ground for denial--and they are not set forth in 303.

MR. FORD: Commissioner, we are going to meet on this in the lunch hour. I think you are on the same point that you were on earlier this morning.

MR. BURDICK: That's right.

MR. FORD: And in the interest of getting through with this matter, would you join us for our meeting at the lunch hour, so that we may understand you?

MR. BURDICK: I have another commitment, but I'll try to attend your meeting as soon as possible. I was a little slow in getting to this point.

MR. KEELY: Under subsection (c) it's a misdemeanor to possess a controlled dangerous substance. It's not a misdemeanor to use the substance. I would like to know why the Committee does not make the use of the drug a crime, because it appears to me there are situations where possession will not be subject to proof, except circumstantially, but you may be able to prove use. At pot parties, if there is any idea the cops are coming, the pot disappears, and you can prove possession only circumstantially.

It would also occur to me under this section that prospective users, or users, are going to say: Well, they have to catch me with it before it is a crime; and it occurs to me use should be a crime, and I would like to know why the Committee has made only possession a crime, and I would like the sense of the Conference on that.

MR. THOMAS: As I understand it, the Committee's thinking has run along the line that if you use it you have to

possess it. We'll re-examine that thought, if you don't think we have sufficiently covered it.

MR. KEELY: I don't think you have.

MR. THOMAS: We'll take another look at that.

MR. DOWNS: Mr. Chairman, I wonder if you will explain a little more what's in the penalties section on page 41. As I understand it, "narcotic drug" is defined specifically on page 4, and there are the four classifications of drugs, but when you get to penalties, there are just three classifications, and the narcotics in I and II would get the highest penalty.

Could you elaborate on the rationale for the apparent three classifications of penalties and the four classifications of drugs?

MR. SONNENREICH: The reason for that was that the general feeling when we went through this with the scientific people was that, because of the nature of the narcotics that were in Schedules I and II and their danger to the public health, they felt that they should be separated out and treated more severely than any of the other substances.

Now, of course, this is a subjective judgment, but this is one of the reasons why we moved some of the narcotics into Schedule III. That was the first reason why we delineated the first category.

The second category was all the other drugs other than those narcotics in Schedules I and II. The other drugs, including narcotics in Schedule III, amphetamines, barbiturates, et cetera--all these prescription drugs would be given the same penalty because of their relative sameness. And when you get to Schedule IV, you are talking about cough syrups, and the scientific people felt that the danger to the public health was far less with the cough syrups, the Schedule IV drugs, than either of the other two categories. And that is why we made our delineation along three lines instead of four.

MR. ABRAMS: Mr. Chairman, I assume we're still on Section 401?

CHAIRMAN DAVIS: Yes.

MR. ABRAMS: I have, myself, some very serious reactions to this Act, and they stem mostly from problems contained in 401 (c). We have in Section 401 made certain persons guilty of "a crime", and in 401 (c) we have made other persons guilty of "a misdemeanor." By our law a misdemeanor is a crime, and I don't know what the distinction is to be, unless there is to be some lesser stigma attached to possession as distinguished from trafficking or manufacturing, or something else.

And by lumping any kind of controlled dangerous

substance into this 401 (c)--and I know the Committee admits it doesn't know what the impact of some of these drugs is on a person, but I know what the effect of this Act is on a person, and I know that our previous Narcotic Drug Act has caused a tremendous amount of harm to people who are, maybe, having possession of a narcotic for their own--maybe for themselves, or they may not.

We don't know whether some of the narcotics are harmful to a person without intent to traffic, but I have seen tremendous harm done by the law to these people because they had possession of these things.

And not only that--the harm in terms of contempt for the law because of the seriousness of the crime.

I didn't read this Act before I came here. I just glanced through it, and there is a no-knock provision in this thing, and all of these relatively repressive things, that people think they can cure this problem by making penalties severe.

Well, I don't believe that. I don't believe that at all, and I don't know what the point of this Committee is with respect to misdemeanor, but is it intended that they be guilty of a serious crime? And if so, why do you change from a crime to a misdemeanor? Or is this supposed to be like a disorderly

person? I don't know what you are referring to.

MR. NEEDHAM: Mr. Chairman---

MR. ABRAMS: I'd like an answer to my question.

CHAIRMAN DAVIS: You want an answer to that?

MR. ABRAMS: I want an answer to the question about the difference between misdemeanor and crime. I want to know why there is a difference, and what the Committee thinks it means by this difference.

MR. VAUGHAN: Mr. Chairman, if I may say some things about this Act which may or may not be responsive to Commissioner Abrams' questions, I would say, first of all, that the no-knock provision in this Act is bracketed. There is an unfortunate typist's error in Section 502 (b). You will note that a bracket closes the provision. It should open the provision, and it does not, and that has led to confusion, I'm sure.

This Committee is merely, in following the Federal Act, noting that a no-knock provision is in the Federal Act, and is writing a provision which a state may use if it chooses. Because it is in brackets, of course, the state is not required to use it.

To speak more directly to the question of penalties, I think that, rather than being a burdensome Act, you will

find that this Act contemplates something which, I think, is more enlightened than the provisions in any law of any state at this moment. Possession of any controlled dangerous substance the first time, the fifth time, the twenty-fifth time, constitutes a misdemeanor.

Now, if "misdemeanor" means different things in different states, let me hasten to say that I believe our notes clarify that. Our intent is to make it in the lowest category of crimes in any state. We use "misdemeanor" there simply because that's the most common expression for the low crime. To conform with suggestions made by the Committee on Style, we use "crime" elsewhere, and because specific penalties are bracketed, a given state will determine what it wants to do with the other penalties against the usual distinction that has been made--the pusher and the manufacturer penalty.

MR. ABRAMS: Is it the Committee's feeling that (c) should be less than a crime, like in New Jersey a disorderly person would be under (c)? A misdemeanor would come in the category of crime.

MR. VAUGHAN: I'm not sure I understand the question.

MR. ABRAMS: Well, a misdemeanor is a crime.

MR. VAUGHAN: Yes.

MR. ABRAMS: You haven't changed anything by

"misdemeanor", as distinguished from "crime". You are using different words, but I wanted to know if it was your intention to reduce the penalty there to something less than a crime.

MR. PIRSIG: I wonder if I could add a word?

The term "crime", of course, includes both felonies and misdemeanors, and in leaving the extent of the punishment to each individual state, what it does in these particular categories will determine, then, whether it is a felony or a misdemeanor. I think every state has some general provision that if the punishment is more than a certain amount, it becomes a felony. This leaves, then, each state to determine within each of these categories whether it wants to make it a felony or a misdemeanor, and the extent of the punishment.

Now, in this category of (c), there we felt that we ought to designate--that it ought to be the judgment of this Conference--that mere possession ought not to be more than a misdemeanor.

Now, on the other point that you raise, this is one that I have urged. I do not think this Conference ought to stop with merely a penalizing statute. At some point we ought to give consideration to a statue which would permit a rehabilitative type of program, either as a substitute or as an alternative to this penalty program. However, we're faced

here with the necessity of producing a statute which will conform to the present federal statute. The present federal statute directs itself solely to the penalty side of the program.

MR. NEEDHAM: Mr. Chairman, as I understand the Act--and I want to apologize to the Committee, because I too did not have an opportunity to read this Act until I arrived here at the Conference--but as I understand the philosophy of this section on penalties, you have now said: regardless of the narcotic, whether it's what we formerly called a hard narcotic drug, such as opium, or whether it is the much-talked-about marijuana, that the mere possession of it now, under this Act--it is your recommendation that both the hard core and marijuana should definitely be treated strictly as a misdemeanor. I think I am correct in that, am I not?

[Mr. Vaughan nodded his head in assent.]

MR. NEEDHAM: Now, secondly, following from that, am I also correct that the organization of your various schedules permits a state administrator, by proper scheduling, to take the marijuana, and by applying within that state an interpretation of the standards which you have set here, come to a conclusion where he may (1) call it a controlled dangerous substance or (2) give it the harder definition of being a

narcotic drug, so that in the application of your penal statute you may then have the pusher of a narcotic drug, or "marijuana", which has been determined by this administrator to be a narcotic drug--the pusher then would be subject to the higher penalty under Schedules I and II, as provided in the Act--am I also correct in that?

MR. SONNENREICH: As to your last statements, that would be incorrect, because the definition of "narcotic drug" found in the definitional language would exclude marijuana, because it isn't a narcotic drug. There would be no way that you could characterize the drug as a narcotic, since it doesn't comport with the definition of what constitutes a narcotic drug.

MR. NEEDHAM: So that for all intents and purposes under this Act, the effect of this Act is to respond to the public clamor of taking marijuana completely out by definition in this Act of the narcotic drug section?

MR. SONNENREICH: I should point out that under existing federal law--even the new law--marijuana is not included or defined as a narcotic drug. What we are doing---

MR. NEEDHAM: In some states it has been included as a narcotic drug.

MR. SONNENREICH: That is correct, by some states,

but the federal standard--there has been a misinterpretation of this. The federal definition of "narcotic drug" is the same definition that we presently have in this proposed Act, and that would not include marijuana. Marijuana scientifically is not a narcotic drug.

MR. NEEDHAM: So that under your set-up, assume for the sake of continuing the hypothesis that we pick up the pusher who is pushing marijuana, and under your interpretation it would be, then, a controlled dangerous substance in the state court. Then the pusher would be subject to the state penalty which applies in (1) (ii)?

MR. SONNENREICH: That is correct.

MR. NEEDHAM: Thank you very much.

MR. Z'BERG: I have two questions on 401.

First, you use the phrase "possess with intent to... deliver". Was that intended to include "furnish"? We use the word "furnish" in California, I believe, don't we, Mr. District Attorney? And I have the feeling that "possess with intent to...deliver" connotes some physical act, whereas with "furnishing" you wouldn't have to have had the narcotic in your possession.

And the second question is: was any thought given to differentiating some of these things based upon the intent

to sell? For example, delivery with intent to sell, it would seem to me, would be a more heinous offense than to have given a marijuana cigarette to somebody for a puff. So was any thought given to differentiating along the lines of sale rather than not sale?

MR. FORD: Commissioner, I think some thought was given in that respect, and perhaps we on the Committee differ from you in our view.

It is our view that if a pusher gives one who has puffed on marijuana cigarettes free of charge, his first injection of heroin, he is far more guilty than in an instance where he would sell a dose of heroin to someone who already uses it. And for that reason we discarded the word "sell" and chose rather the word "deliver".

"Deliver"is defined on page 2, subparagraph (g), as being "the actual, constructive, or attempted transfer of a controlled dangerous substance".

MR. DAY: I don't know that it will do any good right now, but for my own conscience I would like to register my objections to this Act, and first of all I would like to say I'm in complete sympathy with the idea that we should treat pushers as criminals and try to stop this drug abuse that way.

However, when it comes to treating a sick person,

someone who is addicted to drugs, as a criminal, I must object. I think that, as far as I can tell, the main argument here for this proposal is that Congress has already done something along this line, and therefore for the sake of uniformity we are following their lead.

Another argument is that this is better than what we have in most states. I think both of these are very weak arguments. I think that we are a body that should be able to think somewhat independently as to what is right, and it seems to me that since they are following the lead of Congress, which I think is wrong, or instead of just saying, "Well, it's better than what we have," why not try to do what we ought to do?

I think if you want to look at Congress for a better example, I would suggest that we look at the Act which Congress has passed for the District of Columbia in regard to alcoholics and alcoholism. It's called the District of Columbia Alcoholic Rehabilitation Act of 1967.

Now, we have a committee--I'm very happy to say I'm a member of it--which is going to consider this as a possible Uniform Act for this Conference. The approach is the opposite from what you are taking here and what Congress has taken and the states have taken as far as users in the case of narcotics.

The approach is one for treating these people for what they are--sick people--and we're trying to find ways to rehabilitate them, instead of treating them as criminals, locking them up, and punishing them.

I don't want to take too much time on this. I know you have debated this in your Committee and I would hope that some of you, maybe, feel the way I do about it. Just let me read the statements of the purpose in this Act, just by comparison:

> In order to accomplish this purpose and alleviate intoxication and control alcoholism, all public officials in the District of Columbia now take cognizance of the fact that public intoxication shall be handled as a public health problem rather than as a criminal offense, and that a chronic alcoholic is a sick person who needs, is entitled to, and shall be provided appropriate medical, psychiatric, institutional, advisory and rehabilitative treatment services of the highest caliber for his illness.

I commend Congress for taking this action in the case of alcoholism, and I would suggest that maybe we can follow the better lead of Congress in the case of an addict as a sick person also, instead of following what I think is the tradition here in distinguishing between two different kinds

of sicknesses, and treating one as a criminal, and now recognizing belatedly that the other is in fact a sick person entitled to rehabilitation.

MR. RUUD: Mr. Chairman, if I may take the problem the previous Commissioner raised, it's basically the problem I rose about earlier. The definition of "deliver" on page 2 is the actual or attempted transfer.

Now, possession with intent to transfer--suppose the case where A hands a marijuana cigarette to B for a puff. It seems to me, then, that that would bring A within subsection (a) of 401.

Now, I am sympathetic with the fact situation put by the gentleman on the platform where A is a pusher, but let's take the case where A is not a pusher; he is simply a user. And what you do by the broad definition of "deliver" and the removal of any kind of commercial purpose as a requisite in subsection (a) is that you include a lot of people, make them liable under subsection (a), to the more serious crime, when I think it's more consistent with the thinking of the Committee to bring them under (b).

Is there some other way that you can reach the pusher who is trying to develop a customer by giving a free one first? I suspect that with appropriate language that is

not really a gift. That is being given for a commercial purpose. So you might be able to find language which would bring the individual transaction by the pusher within subsection (a), even though the individual transaction is one of gift, but it does have a commercial purpose.

CHAIRMAN DAVIS: Would it be satisfactory to you if the Committee simply takes those comments into consideration?

MR. RUUD: I would appreciate it very much. I would be very much disturbed to see that case remain within (a). It seems to me the case I put, consistent with the thinking of the Committee, ought to be under (b), under the lesser punishment.

MR. THOMAS: We are sympathetic with your comments and the comments of the preceding Commissioner. The Federal Act does have one deviation that we have not worked into this one: "Any person who in violation of the Act distributes a small amount of marijuana for no remuneration shall be sentenced as if it is his first offense under the Act, to a term of imprisonment not more than [ ] and fined not more than [ ]."

I think it should be no more than a misdemeanor, if it were incorporated herein. Since you want that in here, we certainly would not oppose it.

The other point: the Committee--and Dean Pirsig has alluded to it--we are most sympathetic with the rehabilitation need. We have looked at the rehabilitation bill that is pending for the District, and I believe Maryland has considered such. There was insufficient time for the Committee to do more than give it cursory consideration. It was my understanding that there was another Committee of the Conference that is on this subject of rehabilitation, but I believe that may be alcohol only. It may be that that Committee could broaden it to include the drug addicts.

We do recognize your addict is a sick person. That is the sentiment of those on the Committee. The rehabilitation acts we have seen would be a complement to this Act. In other words, one would complement the other. An addict would be excused, in effect, from the penal provisions of this where he was pursuing treatment, and so forth.

MR. SCHWARTZ: I too am very much concerned about this rehabilitation. Massachusetts has a statute which, in effect, tells the judge: if this person is a drug addict, you see that he gets well.

Now, the trouble with this is that when you drop over to 407, it sort of seems to say to the judge: you may put him on probation if he's a good boy, and then dismiss the

charges. But if he's a tough judge, he may say: this fellow is using marijuana, or using heroin, and I'm not going to put him on probation. I'm going to throw him into jail. There is nothing in here which directs the judge to consider the person as a sick person, and one who should be treated.

CHAIRMAN DAVIS: Thank you.

MR. ABRAMS: I think we have reached, at this point, what I regard as the heart of this Act, and that's 401 (c), because I feel that we have advanced very little by passing this Act. Maybe we have prettied up the law a little in trying for a new administrative agency, but we have not in any way attacked the substance of the problem, and to me this is just more repressive legislation, and the idea that rehabilitation is possible is being considered, and I'm not certain in any of this, but I do feel that we are not much further than the Act that was passed thirty-odd years ago.

But is it the opinion of the Committee that the person who has possession of a marijuana cigarette--and we can go to various other drugs later--is a criminal, or should be a criminal? And if it isn't the opinion of the Committee, then you shouldn't make them a criminal. You shouldn't take a kid and afflict him for life with a criminal sentence, just because he had a marijuana cigarette. I don't care what the

federal law says; but I don't believe that the federal law makes any sense.

MR. MILLIMET: Mr. Abrams, may I say that I came to the Committee with very much your point of view, and I think several others did also, and we have listened very carefully to the scientific and medical evidence on the subject, and I think our conclusion is that we cannot conscientiously say that even the possession of one marijuana cigarette is irrelevant to the welfare of our society. It's a devastating fact--at least it was to me--that nobody--nobody in the whole world--can say that marijuana is not a very harmful drug. There haven't been, for some strange reason, although this drug has been used for a couple of thousand years in other parts of the world, any satisfactory scientific studies about marijuana, and all the medical people who came before us and all the scientific people who testified before us say that within the limits of their knowledge it is a very dangerous drug.

We were faced with this problem from the very beginning, and the only conclusion that I came to from listening to all this was that if I had anything to say, I'd do this with alcohol, because it's perfectly true that marijuana isn't much worse than alcohol, from all our knowledge. It has a different effect, but it has a very bad effect, and

we just couldn't come to the conclusion that we could ever say to the United States of America, as has never been said successfully in any other country in the world, that it's all right to smoke pot.

I have four teenage kids, and they have all been through it, and I'm sure many other Commissioners in this audience have been through it, and we all recognize the problem, but there wasn't any basis for us saying we should excuse people from having even one marijuana cigarette. That's why we tried to make this as mild as possible.

You say we may get a hanging judge. Well, you may get a hanging judge under the drug laws of the various states, and maybe the Supreme Court will speak to this, but until it does I don't think that we can say that nothing should be done about it.

MR. JESTRAB: Mr. Chairman, I haven't said anything about this, because I have felt that the ability to classify and reclassify, schedule and reschedule these items, and to delete some of the items from the list, gave us a certain amount of flexibility; but I'm a little bit distressed by what I just heard, and I don't believe that there is any unanimity of opinion in the scientific community, and if the Committee is of an inquiring turn of mind, I would commend to your

attention an article in The Scientific American some time within the past six months--I think in 1970--on a very definitive study of the facts of marijuana, and it does present a very refreshing point of view. I don't believe that it's the only point of view, but so many of these things are in a state of motion that it just seems to me that this is an area where we ought to be very, very cautious, not only of the dangerous substance and that people go to jail, and so on, but the contrary situation where you want to protect these people, as Commissioner Abrams has pointed out, and this is a very sensitive area, and I wasn't concerned about it until I heard somebody say that it's conclusive, and all the medical evidence point to, et cetera, and I don't think that's true.

MR. MILLIMET: That isn't what I said.

MR. DAY: Mr. Chairman, I was happy to hear you recognize that being a narcotics addict is a sickness. Having said that, I find it difficult to say that he should be punished for being sick, as a criminal--call it a misdemeanor or anything else--where you are talking about, in your comments, up to $5,000, or a year in jail for being sick.

This person who is an addict takes drugs not because he wants to, but because he has to, because he cannot help it. This is a compulsion which is beyond his control; and to say

that that compulsion is, therefore, a crime is pretty irrational, in my opinion.

Now, again, let me say I am in full sympathy with the notion that this is a very dangerous thing, that these are dangerous drugs, that they are bad for society. This is my opinion too. But I think that the way you should go about it is to go after those people who are pushing these, manufacturing and distributing these, and getting people sick--addicted to these drugs. Those are the people we should go after, and I feel these are crimes.

Once a person is sick and is an addict, then I think, as you have suggested--I don't think it's complementary; I think it should be in the alternative. I think you should take this instead. We should take rehabilitation as Congress has seen fit to do in the case of alcoholism, and I think that I would like to add--or I'll make a motion that it is the consensus of this house that the sick person, the one who takes drugs because he cannot help it, not because he chooses to but because he has to--he is sick--that that person should be rehabilitated, and that this Committee should reconsider this and provide for rehabilitation, rather than criminal treatment of these sick people--and I so move.

CHAIRMAN DAVIS: Let me try to clarify that motion

just a little bit. You are not necessarily saying that everyone in possession would not be guilty of a misdemeanor?

MR. DAY: No, I'm not.

CHAIRMAN DAVIS: What you are saying is that the addicts won't be treated as a criminal, but would be subject to rehabilitation?

MR. DAY: Right, and I don't intend to try to rewrite this. I'm asking that this be the consensus of the house, that we recommit this to you, and ask you to write something that would try to treat addicts as sick people rather than criminals. That will involve problems of definition, just as the Committee on Alcohol will have similar problems.

I think it would be proper for us to do this, and recognize that these are sick people, and not treat sick people as criminals, and make their crime their illness.

MR. NEEDHAM: I believe that this is a little bit different. I sympathize with the prior speaker in wanting to treat addicts. I think that the proper way to treat the addict is by providing rehabilitative institutions within the state. However, I feel that there is a justifiable public policy attempting to be served which affects, perhaps, 90 per cent of the people, by saying that the user, or the possessor of a narcotic, is guilty of a misdemeanor.

We have this every day. Spitting on the sidewalks in most communities is a misdemeanor. By making it a misdemeanor we have some deterrent which prevents people from spitting on the sidewalk.

I think that, in reading this particular Act, the great majority of those who run afoul of it will not be addicts; but I think the intent of the Act and the public policy behind it is to make people aware that the possession of marijuana and other narcotic drugs leads to the possibility of becoming an addict. I think that the addict and his problem should be taken care of as the alcoholic is taken care of, by separate and distinct legislation, and not in this particular Act.

While I have the microphone, and perhaps not directly on the point of this motion--but my wife and I for three years had occasion to work with young people in one of the OEO-sponsored programs in our local community in Rhode Island, and when I say "young people," I'm talking about the high school students; and we had a program where we visited at Daytop, in New York, and our Marathon House, in Rhode Island, which are homes being run by addicts for the benefit of addicts. And while they don't purport to be medical experts, I can report to you that there is not one person that we have talked to in

the last four years who is an addict who has said that he did not start down the road to becoming an addict by using marijuana.

And in that sense, gentlemen, I think even one cigarette ought to be punished as a misdemeanor, if only for the deterrent effect of the statute, and I'm opposed to the motion to put such a thing in this Act, as it relates to the Act.

MR. THOMAS: There are two comments I want to make.

As I should have indicated, perhaps, in my opening remarks, we on the Committee feel that rehabilitation is something that should be worked on. It is not going to be an easy task for whoever works on it. There is no easy solution that, I think, anybody has. The comments that we have heard from the medical profession and others who have talked to us is that no one has a rehabilitation program that is effective. There are some answers. Your methadone centers,and so on, have been of help. The answer as to how much help it's going to be is something we don't know.

There is, as we see it, a pressing need for this Act, if it does nothing more than update the 1930 Narcotic Drug Act. The states and the Federal Government need this type legislation to run hand in hand, federal and state and from state to state.

I don't think that should deter work on a Rehabilitation Act. The information pro and con on whether this will help or not help is something that I don't think anybody has the answer to today. You talk to addicts. They tell you: Do something for us. We say: What? They don't know. You can't get an answer. They have been in every institution where they might get help today. They are dried out--theoretically, cured--and on the streets on the habit again in a matter of hours or days. They say society needs to help them. Certainly, it does. But how to set it up--I don't think anybody has the answer.

On your one point of possession of controlled dangerous substances in this Act, we do make an exception for persons in possession pursuant to the lawful order of practitioners. That's on page 30, subparagraph (3) under (c) there. So simple possession of any of the drugs pursuant to the order of a physician is legal possession.

MR. BRAUCHER: Mr. Chairman, are we still on the motion to recommit this whole thing to add rehabilitation?

CHAIRMAN DAVIS: Well, as I understand the motion, it is to change the provisions to the extent that an addict will not be treated as a criminal or as being guilty of a misdemeanor, and that he will be subject to some type of rehabilitation.

MR. BRAUCHER: Well, I wanted to speak against the motion and I want to speak against it not because I'm not sympathetic with the purpose of the mover, but because I don't believe that you can do that at this session of the Conference and get it completed, and I think it's very important that we get this Act completed.

There is going to be a federal statute. There have been several states which have passed preliminary drafts of that federal statute. It's of the utmost importance that you have an Act which is compatible with the federal statute, and it seems to me we ought to go forward with that.

Now, having said that, I don't mean that there aren't things that people can differ about here. My own personal feeling about 401 (c), whether you are talking about addictive drugs, such as heroin, or whether you are talking about--as I have understood it--a completely non-addictive drug like marijuana, and which our expert says is not a narcotic drug at all but, I guess, some kind of a stimulant rather than a depressant--in either case it has seemed to me that it was a mistake in law enforcement, even if you assume that this is an evil thing, to punish the victim of the crime. That is not, in my feeling, an effective way to enforce the law, and I just didn't think it was a good way to enforce the

prohibition law, to go and get the man who was drinking the whiskey during prohibition. It suggests prohibition was a good thing.

However, every state has a possession law. The Federal Government has a possession law. This one you have here is so much better than any law that I know anything about that I think we ought to go forward and get it and improve it.

I do think we can fix up some matters of detail. Some of them have already been raised.

It seems to me the distinction between the addict--or the user, because it's not an addict in the case of marijuana, as I understand--the user should be distinguished sharply from the pusher, the seller; and I'm very much worried that the way this thing is set up here, as I am informed by hearsay on this, I'm happy to say [laughter]--it's very common for users of marijuana to take a cigarette and to pass it around among several people.

As I understand it, that makes you the equivalent of the pusher, because you have possessed that cigarette with the intention to deliver it to the next fellow in the circle; and that's crazy. That isn't the pusher. It's reported to me by the young that's the standard method of use, and I just think we ought to fix that, but as far as this motion of trying

to reform the world at this session of the Conference, I think we don't have time, and I think it's very important that we get something done here.

[Calls for the question]

CHAIRMAN DAVIS: All right. The question has been called for.

MR. COAKLEY: Mr. Chairman, just a minute. I'm on this Committee, and I would like to say something at this point which I think is relevant.

First, I want to say, like Commissioner Day, that I'm sympathetic to the rehabilitative treatment of the sick addict. California has very advanced and flexible treatment for sick addicts--similarly, the State Hospital--and in any criminal case, not just narcotics cases, the court may commit the defendant, whether he be charged with robbery, burglary, or what have you, to the rehabilitation center at Corona. However, I think we are concerned here in this Act primarily with the commercial seller. I want to say a few words from that standpoint.

CHAIRMAN DAVIS: Excuse me, sir. Are you speaking directly on the motion?

MR. COAKLEY: Well, it's relevant to the motion. If you are going to eliminate the misdemeanor provision of this

Act, it's relevant.

CHAIRMAN DAVIS: He's talking only about rehabilitation.

MR. COAKLEY: Rehabilitation? Well, no. I'm talking about whether you eliminate the criminal--misdemeanor--penalty.

CHAIRMAN DAVIS: Commissioner, as I understand it the motion was not to eliminate possession in all senses as a misdemeanor. It was merely to eliminate as a criminal the habitual user who was addicted to it, and that is the thing that we are voting on.

MR. COAKLEY: I'll save my comment for later, then.

CHAIRMAN DAVIS: The question has been called for.

MR. CALLOW: People have been coming in and out of the room during this time, and this is an important vote. Will you restate the question?

CHAIRMAN DAVIS: As I understand the motion, it is that Section 401 will be reworked to the extent that the addict will not be treated as a criminal, or guilty of a misdemeanor, but will be subjected to rehabilitation treatment. Is that correct, Mr. Day?

[Mr. Day nodded his head in assent.]

MR. MILLER: What is the effect of the motion on the man who has not as yet become an addict, but who possesses and

uses?

CHAIRMAN DAVIS: He would still be guilty.

MR. COAKLEY: The trouble is that an addict is frequently a pusher and seller. He's both.

CHAIRMAN DAVIS: Let's take a vote on this motion, please.

[The motion was put to a vote and was lost.]

MR. COAKLEY: With respect to 401 (c) as revised, this section makes possession of heroin and other hard narcotics a misdemeanor, with no alternative. In California this would put a maximum ceiling of six months in the county jail on the possession of heroin, even though the possessor might be a commercial and notorious pusher.

As we were told in the Special Committee in the opening remarks Sunday morning, the over-all policy of the Act was not to do anything about penalties, but in the preface this policy is also stated, and the commentary in this note says that sentence length is purely a state decision.

In California, if enacted, this section would seriously impair the work of the local police officers and prosecutors in the performance of their duties. Under California law a police officer cannot make an arrest for a misdemeanor unless the crime is committed in his presence, although the officer

may have a strong suspicion and probable cause to believe that the crime was committed, is being committed, or is about to be committed. He cannot legally make an arrest if he does not see the crime committed, if it's classified as a misdemeanor.

This law is basic. Its roots are very deep in the jurisprudence of this country and of all the countries of the British Commonwealth. Section 501 of this Act, as you will see later, spells out this concept as follows. It says that an officer or an employee may make an arrest without a warrant where a violation of this Act is committed in his presence. So in states such as California, which differentiate between felonies and misdemeanors, a police officer who receives a phone call in the middle of the night from a person whose voice he recognizes as that of a reliable informant telling him that John Doe has just received some heroin--if he takes the time to find a prosecutor, a stenographer, and a magistrate to get a search warrant, it's too late. He cannot go out legally and arrest John Doe and search him, even though he might suspect that John Doe is a commercial pusher.

Some persons may say that police can make the arrest on the theory that John Doe has possession of the heroin with intent to sell it, which may be classed as a felony, and is so classed in California; but intent to sell, or delivery, is an

essential element of the offense, and the alleged facts must be proved, and not conclusions. They must contain evidence to support the necessary element of the existence of intent to sell. Sheer subjective speculation or opinion is not enough.

So if you have an arrest, and seizure is made, and John Doe is charged with the felony of possession with intent to sell, the whole case may be lost on a pre-trial motion to suppress, at which time in California all the prosecution witnesses may be called by the defense and interrogated, and if the judge finds the evidence is insufficient, as is frequently the case, to prove the element of intent to sell, the case is out. It's down the drain. The commercial pusher gets off free; and because of the direction of the decisions in the higher courts of this country on the federal and state levels, judges are running scared, and they are doing just that.

The result is that the commercial pushers are going free to deal and push again, and so I recommend that this section,consistent with the policy stated in the preface and in the commentary, instead of using the word "misdemeanor"--that you put in brackets, as you did in other penalty areas, not more than a certain fine--a fine not to exceed a certain amount, a county jail confinement not to exceed a number of

months, or imprisonment in a state prison for a certain period of time, the last to take care of the commercial seller. If you don't do that, in California and other states like California, where the difference between misdemeanor and felony is such as it is, you are taking a tool away from local law enforcement which they badly need.

CHAIRMAN DAVIS: Commissioner, may we hold that until we resume later on? I think the time has come when we are going to have to adjourn.

Do you have a motion?

MR. McCLENAHAN: Mr. Chairman, I move that the Committee of the Whole rise, report that it has had under consideration the Uniform Controlled Dangerous Substances Act, has made progress, and asks leave to sit again.

CHAIRMAN DAVIS: You have heard the motion.

[The motion was put to a vote and was carried.]

UNIFORM CONTROLLED DANGEROUS SUBSTANCES ACT

Wednesday Afternoon, August 5, 1970

Mr. Tom Martin Davis of Texas presiding; Mr. John W. Thomas of South Carolina presenting the Act.

CHAIRMAN DAVIS: Commissioner Coakley, I think you made a suggestion. Do you care to make a motion in line with your suggestion?

MR. COAKLEY: Yes, Mr. Chairman. My motion is, in Section 401 (c), on the last line there, that we delete the words "upon conviction guilty of a misdemeanor", and that there be substituted the following words: "upon conviction punishable by [a fine of not more than [ ] dollars or confinement in the county jail for not more than [ ] or imprisonment in the state prison for not more than [ ] years.]"

CHAIRMAN DAVIS: Any discussion on that motion?

MR. MUNTER: Mr. Chairman, I speak against the motion. I think it is more stigmatizing to be convicted and fined, either moneywise or by imprisonment, than to say that you are guilty of a misdemeanor. There is basically more odium attached to being fined or being imprisoned than for a court, for example, to find you guilty but suspend the imposition of a sentence.

I don't think that simply deleting the words "shall

be guilty of a misdemeanor" really accomplishes what the distinguished Commissioner from California has in mind, and I'm against the motion for that reason, Mr. Chairman.

MR. READ: Mr. Chairman, I rise in opposition to the motion. If there is one thing that is true, it is that the law has been made a fool by the laws which punish the young with felonies--blame for felony for something which is not that serious.

I sympathize with Commissioner Coakley's problem as far as the professional and the pusher are concerned, but unless and until someone comes up with an effective way of distinguishing between the possession of the felon and the possession of the young and relatively innocent, I think there is no justification whatsoever for classifying possession as more than a misdemeanor.

MR. CLAYTON: If I understand the motion correctly--and I think I'm opposed to it--the last phrase in my State would make it a felony, because if you can be sentenced to the penitentiary, the crime of necessity must be a felony.

Is it the desire to put this in the category of a felony?

CHAIRMAN DAVIS: I understood that the purpose of the motion was to give the states free options. It could be a

misdemeanor. It could be a felony.

MR. SULLIVAN [Id.]: This was really my question. I appreciate the problems that Commissioner Coakley has mentioned prior to our recess on the question of enforcement, but to solve your problem is it going to be necessary to make possession a felony? Is there any other alternative to take care of this problem so that the simple user is not subjected to a felony conviction?

MR. COAKLEY: This is giving each state legislature three alternatives: fine, county jail, or state prison. It doesn't necessarily make the state make a felony out of it. It gives each state the three alternatives.

In California we have this alternative concept, and we don't want to have it changed by this.

MR. JENNER: Mr. Chairman, this motion, if adopted, would utterly destroy any effort toward uniformity. It is a motion that sets before this Conference a philosophy that is at odds with every objective theory on the subject in this country today. It is an attempt, because of the peculiarities of the California statute, to impose that upon the rest of the country.

Of all the things before the National Commission on the Causes and Prevention of Violence, what saddened us the

most was the overcriminalization of the youth of America through marijuana, and two states in this union overcriminalize more than any other two states: California and Arizona. And because of the overcriminalization of marijuana and the treatment accorded drugs in California and Arizona, the young of this country are being branded as convicts because of an imposition upon them of the felony penalty which makes them convicts. And so the young so far in this country are branded the rest of their lives as ex-convicts, deprived of the exercise of the full rights of citizenship.

And it is reported in the Violence Commission report, until such time--and the Federal Government has followed this, and the President of the United States recommended to the Congress personally that as far as marijuana was concerned--until the medical men and researchers in this nation are able to say that marijuana is the equivalent, or comparable to, hard drugs, and addictive, please do not criminalize the youth of America. And this motion would do precisely that.

MR. COAKLEY: It does not. It does not give that. It gives an alternative, and there is no occasion when any youthful user has been branded as a felon. The courts invariably give the marijuana user a fine and probation, without any penalties, or a fine or, in proper cases, if it's a second

or third offense, maybe a little time in the county jail. But they never brand them as a felon. They don't do that in California.

MR. ABRAMS: To the extent that the Committee has claimed enlightenment and reform in connection with this Act, it rests in 401 (c), where 401 (c) is purportedly reducing the penalty for possession of dangerous substances.

In New Jersey the penalty for possession is two years.

Now, if we are going to install in this section a choice for the state to restore or not to change, its existing penalty, and not say that this Conference thinks that possession is a different category of offense, then I think there is no point in passing this Act at all. I'm opposed to the motion.

CHAIRMAN DAVIS: Any further discussion on this motion?

[Calls for the question]

MR. CLAYTON: Mr. Chairman, I agree with the statements made by Commissioner Jenner and Commissioner Abrams, and I would ask, in response to the comment made by the Commissioner from California, if the courts have ignored the option of a felony, why have it?

MR. COAKLEY: For the commercial seller who is too smart to get caught selling, and can only be caught for possession.

CHAIRMAN DAVIS: The question has been called for.

[The motion was put to a vote and was lost.]

CHAIRMAN DAVIS: Are we ready now to continue?

MR. THOMAS: Before lunch there was talk about the Committee drafting something that would not make the passing of cigarettes around the table a crime under 401 (a) or (b). The Committee has come up with this draft, and would like the sense of the Committee of the Whole.

This would be a subparagraph (d) at the bottom of page 42 reading:

> Any person who in violation of this Act delivers a small amount of marijuana for no remuneration to a person over eighteen years of age---

I think it ought to be "to any person".

> ...is guilty upon conviction of a misdemeanor.

I don't think it ought to be restricted to just those people over eighteen years of age. Give it to any person.

MR. MILLIMET: You need the eighteen years of age, because you want it to be a felony if they give it to people

under eighteen.

MR. THOMAS: That's right. We'd like the sense of the house on that.

CHAIRMAN DAVIS: Any comments on the new subsection?

MR. BRAUCHER: Mr. Chairman, I feel in part responsible for the Committee doing this, and I don't think you have gone as far as I would really like to have you go, but I think you have gone, probably, about as far as you can go, and I support the motion.

CHAIRMAN DAVIS: We don't have a motion. We're just asking for criticism or suggestions. If there is no further comment on that, we will move on.

MR. MILLIMET: No, no. We want the sense of the house on that.

CHAIRMAN DAVIS: Then you want to make a motion.

MR. THOMAS: I think the Committee is divided down the line. We'd like somebody to make a motion to put it in, and let the house vote one way or the other.

MR. RUUD: I move approval.

CHAIRMAN DAVIS: Did I hear a motion that it be included?

MR. DAVIES: So moved.

CHAIRMAN DAVIS: All right. The motion is to

include this new section. Do you want it read again?

[Calls of "Yes! Yes!"]

CHAIRMAN DAVIS: "Any person who in violation of this Act delivers a small amount of marijuana for no remuneration to a person over eighteen years of age is guilty upon conviction of a misdemeanor."

Any discussion on that motion?

MR. RUUD: This, then, would make a minor, one who was seventeen, who handed this marijuana cigarette to another seventeen year old, subject to prosecution for a felony. I just don't understand.

If you hand it to someone, you exclude it only if the person who receives it is eighteen or over, and thus, it seems to me, that this, if I understood what the Committee was doing with the previous draft, recedes from what I thought was a very sensible provision, which was to make possession only a misdemeanor.

Here we have a noncommercial transaction. It's not a gift for commercial purposes, but a purely noncommercial transaction, and the person is being treated the same way as a pusher. The policy bothers me. I would oppose the motion, and urge that the Committee find some other way to deal with the noncommercial delivery.

MR. BURDICK: I'd like to remind Commissioner Ruud that under the Juvenile Court Act the crime would be kept within the juvenile court until such time as the juvenile court transferred jurisdiction to the adult court, and it may well be that the court could do that in the case where the child did not respond to the treatment facilities of the juvenile court, in which case he would be treated as an adult for prosecutive purposes. But until the transfer was made, he would have the protection of the juvenile court and would not be prosecuted as an adult.

CHAIRMAN DAVIS: Thank you. Any further comment on this motion?

MR. COWEN: That may be true in those states which set eighteen as the juvenile age, but in Georgia we're talking about sixteen even while we are considering the Juvenile Court Act.

MR. Z'BERG: As I gathered it, the reason for the suggestion was that a lot of young people, perhaps, use marijuana, and at some occasion might pass a marijuana cigarette to somebody else. It seems to me one of the problems we have gotten into is that there is no distinction here in the penalties between possession of marijuana and other non-addictive drugs, as against the hard narcotics like heroin,

opium, and the rest; and the problem with the young people today, I think, isn't found in the use of heroin and some of the hard narcotics, as it is with marijuana and various kinds of pills.

We have not made any differentiation in 401 there. If it's going to be proper to have a straight misdemeanor for possession and the giving of a cigarette to smoke, which I think we should have, we ought to then also include some of the other things which currently are in widespread use by young people, some of the various pills, which is exactly the same thing as marijuana, and we're talking about the effect on young people, the culture that has arisen. If among the young people most of them don't think it's bad to smoke a marijuana cigarette, and because of that fact that you are going to jail, most of them don't think that taking a pep pill, whatever the various names may be, is likewise also bad, and I'm not so sure it ought to be a felony.

I think we ought to get down to differentiating between the kinds of things we want to make felonies--that is, the hard narcotics--and put the other things all in the marijuana section. So if this is limited only to marijuana, I think we are not getting to the problem we are talking about, and that's young people falling into the trap of getting

felony convictions.

MR. BRAUCHER: Mr. Chairman, after listening to this and thinking about a group of people, some of whom are seventeen and some of whom are eighteen, and they pass this thing around the circle, I think I'm forced to move to amend this to delete the reference to the age of eighteen years.

I don't have the words in front of me, so I don't know just what you delete, but it seems to me this principle is good for a child of seventeen who passes the thing to a child of eighteen, and equally good for the child of eighteen who passes it to a child of seventeen.

And in response to what was said by the last speaker, which is a separate point, really, this is a big problem and it's really rather separate from the problem of heroin, or speed, or whatever else, and it does really call for special treatment.

CHAIRMAN DAVIS: Are you suggesting that any age be put in, or eliminate all reference to age?

MR. BRAUCHER: Eliminate the reference to age, is what I am proposing as an amendment.

MR. MILLIMET: What about the age of five, Bob? You know this stuff is being passed around in grammar school now. Do you want to let them be guilty of only a misdemeanor

if they give it to kids eight years old?

MR. BRAUCHER: Well, there are other statutes that deal with impairing the morals of a minor and that sort of thing. What's worrying me is that the principal thrust of this prohibition--and, really, the great bulk of the cases under all of 401 (c) are going to be against the under twenty-one--and to draw this distinction, so that when ten people are sitting in a room, some of them are felons and the other half are misdemeanors, seems to me to be wrong, and I'm troubled by leaving it to the Juvenile Court Act, because I understand there is a variation in those. It will take care of it in some states, and not in others, and it seems to me this thing gets these people at least out of the felony class.

CHAIRMAN DAVIS: Any further comment? If not, we will vote on the substitute motion first, which is to eliminate from this proposal any reference to age.

MR. DAVIES: Mr. Chairman, would it have any appeal to make a distinction of age--in other words, to someone two years younger than themselves, or something, so that you don't have an older group corrupting a younger group?

CHAIRMAN DAVIS: I don't know, but we have got a specific motion. Now, let's get on that, and then you can make other motions if you want to. We'll vote on the substitute

motion first, to delete any reference to age.

[The motion was put to a voice vote.]

CHAIRMAN DAVIS: The Chair is undecided.

[The motion was put to a standing vote.]

CHAIRMAN DAVIS: The motion carries.

All right, the principal motion now would read this way:

Any person who in violation of this Act delivers a small amount of marijuana for no remuneration to a person is guilty upon conviction of a misdemeanor.

MR. BLEWETT: Is this now open for discussion?

CHAIRMAN DAVIS: It's still open for discussion, yes.

MR. BLEWETT: Mr. Chairman, Commissioners, I am not opposed in principle to what is being accomplished here, but I think we are embarking on some very difficult legislation. I think it poses a real problem to those concerned with administering this law as to what is "a small amount", and I personally feel that practically all of our involvement in crime of whatever nature or to what extent, commences at some stage with the influence that prevails by giving a member of a gang or a crowd or a crew--whatever you might designate it.

Now, it is my own personal feeling that if one person enters a crowd, be it children or adults, there is a

tendency for some of those to follow whoever is the leader, and I think in the case of teenagers--say, seventeen or under--if a group of those youngsters get together, and one of those persons comes prepared with a pack of marijuana, or however it's contained, there is an inducement there to the other five or six which wouldn't exist had it not been for the original act of the one who is the aggressor, and I think this is not only bad legislation, but I think it opens the door to something we're trying to control.

So I honestly and sincerely urge that this Conference think about the effects of this situation, innocent in the first instance but troublesome from there on, and I think it's bad legislation, and I think this motion should be defeated.

MR. VAUGHAN: I think the tinkering that has taken place already with this proposal indicates its lack of merit. We worried about the question of seventeen year olds as opposed to eighteen year olds, and we finally determined to delete any reference to age. The worry about the substances mentioned has already taken place. Should we refer to mescaline? Should we refer to peyote, LSD? Where does one stop in considering the kind of substances which probably should be mentioned in addition to marijuana?

What we are doing here is tinkering with a section

which tries to set up under subsection (a) penalties which will generally apply to trafficking offenses, as distinguished from paragraph (c), which generally will apply to possessing offenses. Now, in the examples mentioned, we are assuming that a judge and a charging district attorney will not, if properly chosen, bring the offense under paragraph (c), the simple possession charge, which carries only a misdemeanor penalty. We are saying that we must tie the hands of society. I think it's a bad public policy, and I can raise my own bad example. I have a five and a half year old daughter. This would make it a misdemeanor to give her a small amount--whatever that is--of marijuana. That seems bad to me.

MR. BURDICK: I am concerned about the interpretation of those words "a small amount". This may make the statute void because of uncertainty, and I think if you are going to talk about "a small amount", you ought to talk about not more than one ounce. This is the way marijuana is commonly sold, an ounce of marijuana for about $15, and this is more or less the common denominator in trading marijuana.

CHAIRMAN DAVIS: Judge, as I understand what they were trying to get at here, it is the group of teenagers who get together, or others, and one passes a cigarette, and each takes a puff. They are not talking about sale at all.

MR. BURDICK: Nevertheless, I think you have to be more definite as to what the small amount is.

MR. JESTRAB: A one-ounce cigarette. [Laughter]

MR. READ: I think I recall the statement that their language is something that appears in the federal law, except that the penalty is different. Could the Committee tell me: does it appear in the federal law? And if so, is it limited to marijuana?

CHAIRMAN DAVIS: Yes, it is--yes to both questions.

MR. SONNENREICH: It is there in 501 (c) (4) of the federal bill.

MR. MILLIMET: And it uses the phrase "small amount".

MR. RING: Mr. Chairman, I want to underscore the statement just made from the platform that, really, inherent in this is the suggestion of not complete confidence in the prosecuting attorney and the court itself.

I have had occasion to be assigned in many instances in the District of Columbia, as a member of the Bar, to represent various clients, often youthful clients. The most usual situation is that if the indictment is reasonably broad--a two-count indictment--at least in the District of Columbia it would be feasible to work out under those circumstances a

dropping of the felony count and an entering of a plea on the misdemeanor count.

I really think that what is inherent here is the feeling that in those situations where you have a limited use, a social use, of marijuana, you are not going to have this kind of flexibility among those who hold the responsibility for enforcement of the law, and I think you are hamstringing and tying the hands of the prosecuting authorities to do what is necessary when it extends beyond a mere harmless, or semi-harmless social use or experimentation.

So I think that we ought to not disrupt our prosecuting authorities, but rather recognize that hard cases make bad law, and that we ought to extend some degree of confidence in the people who are charged with the enforcement of the Act.

CHAIRMAN DAVIS: Gentlemen, unless you have some new thought, please limit your comments.

MR. LANGROCK: I'm just a little worried about this confidence in our officials. The whole purpose of law is to restrain individuals from action, and we talk about misdemeanors as if it was nothing.

Now, I have had clients of mine who are serving two or three years in jail who were convicted of misdemeanors. I don't see what everybody is so upset about, if we make it a

misdemeanor. I would favor the motion.

MR. PIRSIG: I didn't have the benefit of the deliberations of the Committee meeting, which I did not attend, which led to this particular recommendation.

MR. VAUGHAN: It is not recommended.

CHAIRMAN DAVIS: It is simply a motion here to get the sentiment of the house.

MR. PIRSIG: Very well.

Well, I want to make one further comment. My understanding of the indefiniteness of terms in criminal law does not invalidate the provision of "a small amount" of marijuana as a test of criminality. There are many criminal statutes much more vague than that. I am in favor of this particular section.

[Calls for the question]

CHAIRMAN DAVIS: All right. The motion is that you would favor including this subsection (d). A vote in favor of the motion would include it; a vote against the motion would exclude it.

[The motion was put to a voice vote.]

CHAIRMAN DAVIS: The Chair is in doubt.

[The motion was put to a standing vote.]

CHAIRMAN DAVIS: It was 39 for, 47 against. The

motion loses.

May we now proceed to Section 402, page 44?

MR. FORD:

SECTION 402. [Prohibited Acts B - Penalties.]

(a) It is unlawful for any person:

(1) who is subject to Article III to distribute or dispense a controlled dangerous substance in violation of Section 307;

(2) who is a registrant, to manufacture a controlled dangerous substance not authorized by his registration, or to distribute or dispense a controlled dangerous substance not authorized by his registration to another registrant or other authorized person;

(3) to refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this Act;

(4) to refuse an entry into any premises or any inspection authorized by this Act; or

(5) to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other place which is resorted to by persons using controlled dangerous substances in violation

of this Act for the purpose of using these substances, or which is used for keeping or selling them in violation of this Act.

(b) Any person who violates this Section is guilty of a crime and upon conviction may be imprisoned for not more than [ ], fined not more than [ ], or both.

CHAIRMAN DAVIS: Any comment on Section 402?

[There was none.]

CHAIRMAN DAVIS: Hearing none, we'll go to 403.

MR. FORD:

SECTION 403. [Prohibited Acts C - Penalties.]

(a) It shall be unlawful for any person knowingly or intentionally:

(1) to distribute as a registrant a controlled dangerous substance classified in Schedules I or II, except pursuant to an order form as required by Section 306 of this Act;

(2) to use in the course of the manufacture or distribution of a controlled dangerous substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) to acquire or obtain possession of a controlled dangerous substance by misrepresentation,

fraud, forgery, deception or subterfuge;

(4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Act, or any record required to be kept by this Act; or

(5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this Section is guilty of a crime and upon conviction may be imprisoned for not more than [ ], or fined not more than [ ], or both.

CHAIRMAN DAVIS: Any comments on Section 403?

MR. ARNOLD: Mr. Chairman, I apologize for the lateness of the inquiry, but the rapidity of the reading makes this almost necessary.

Going to Section 402 and looking at prohibited acts, if I read it right, it says it is unlawful for any person to refuse an entry into any premises. I don't really understand

what that means.

MR. SONNENREICH: All the regulatory laws have such a provision in them. That means that to refuse entry without their consent, or pursuant to a warrant.

In other words, it's entry prior to the Supreme Court cases. In the Colonnade Catering case it was simply the fact there was no way to say you could not go in; and if you failed to do so, then you were in violation of the law. After the recent decisions, there are two criteria. You can refuse to let him in unless he has a warrant, or you can consent to let him in. Those are the two basic criteria, but what it means is that you cannot refuse to let him in if he doesn't have a warrant. If he has a warrant, and you refuse to let him in, it's a violation of law.

MR. ARNOLD: But it doesn't say that.

CHAIRMAN DAVIS: Is it not correct that the Supreme Court recently so held in construing a similar statute? That's been read into law by a very recent Supreme Court case.

MR. ARNOLD: What has?

CHAIRMAN DAVIS: You do not violate the law unless you refuse to let a person with a warrant enter.

MR. JESTRAB: Why must we put it in the Act?

CHAIRMAN DAVIS: Just a minute, gentlemen. Let the

Reporter answer that, or one of the members of the Committee.

MR. MILLIMET: I think there's a typographical error in here.

MR. McCLENAHAN: Commissioner, if the word "or" in line 21 were changed to "for", would that correct it?

MR. ARNOLD: Yes, sir.

MR. MILLIMET: That's a typographical error.

MR. ARNOLD: It makes a substantial difference.

MR. McCLENAHAN: It sure does!

MR. RUUD: Is 402 designed to apply only to persons within Article III?

CHAIRMAN DAVIS: The answer is yes, I'm told.

MR. RUUD: Then it doesn't do that, and I think the typographical error is on line 3. The (1) should be moved to line 4, and the colon put after "Article III". Right? That will do it, and I think that caused the other gentleman's problem. Is that correct?

CHAIRMAN DAVIS: The Committee will accept that. Let the Committee consider that. I think they will accept it.

If there are no further comments, we will go to Section 404.

MR. JESTRAB: I'm not sure that I understand the import of sub (5) of 402 (a). Does that mean that any place--

any store, any establishment of any kind--where a transfer takes place comes within the language of this Section, or within the intent of the Section?

MR. MILLIMET: Only a person subject to Article III.

MR. THOMAS: It is intended to preclude the maintenance of illegal establishments for this purpose. It makes the establishment illegal.

MR. JESTRAB: Well, the thing that bothers me about this is that this is something akin to vagrancy, and the definition of vagrancy, and of course it has overtones that are much more serious than in the case of vagrancy, "to keep or maintain any store...which is resorted to by persons using". That imposes, it seems to me, a terrible burden upon the property owner, or the person in control of the property, and I am not sure that you want to do that.

In order to speed things up I would just ask you to take a good hard look at it.

MR. THOMAS: We'll take a look and see whether the words "knowingly" or "intentionally" should be included.

MR. FORD:

SECTION 404. [Penalties Under Other Laws.] Any penalty imposed for violation of this article shall be in addition to, and not in lieu of, any civil or

administrative penalty or sanction authorized by law.

CHAIRMAN DAVIS: Any comments on Section 404? [There were none.]

If not, we go to 405.

MR. FORD:

SECTION 405. [Bar to Prosecution.] In any case where a violation of this Act is a violation of a Federal law or the law of another State, the conviction or acquittal under Federal law or the law of another State for the same act is a bar to prosecution in this State.

CHAIRMAN DAVIS: Any comment on Section 405? [There was none.]

MR. FORD:

SECTION 406. [Distribution to Persons Under Age 18.] Any person who is 18 years of age or over who violates section 401(a) by distributing a substance listed in Schedules I or II which is a narcotic drug to a person under 18 years of age who is at least three years his junior is punishable by the fine authorized by section 401(a)(1)(i), by a term of imprisonment of up to [twice] that authorized by section 401(a)(1)(i), or by both. Any person who is 18 years of age or over who violates

section 401(a) by distributing any other controlled dangerous substance listed in Schedules I, II, III, and IV to a person under 18 years of age who is at least three years his junior is punishable by the fine authorized by sections 401(a)(1)(i) or (iii), by a term of imprisonment up to [twice] that authorized by sections 401(a)(1)(ii) or (iii), or both.

CHAIRMAN DAVIS: Any comment on Section 406?

MR. LANGROCK: I just have a quick question with regard to Section 405. Does conviction under this--is that a bar to a federal prosecution later on, or is this a one-way street here?

MR. FORD:

SECTION 407. [Conditional Discharge for Possession as First Offense.] Whenever any person who has not previously been convicted of any offense under this Act or under any statute of the United States or of any State relating to narcotic drugs, marihuana, or stimulant, depressant, or hallucinogenic drugs, pleads guilty to or is found guilty of possession of a controlled dangerous substance under section 401(c), the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on

probation upon terms and conditions as it requires. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions under Section 408 of this Act. [Discharge and dismissal under this section may occur only once with respect to any person.]

CHAIRMAN DAVIS: Any comment on Section 407?

MR. BURDICK: We have a very comprehensive statute in North Dakota on suspension of imposition of sentence for all crimes which would make this section totally unnecessary in our State. Therefore, I suggest that it be bracketed.

I know there are other states that have independent statutes that permit the court to suspend imposition of sentence for a period of years, during which the defendant is on probation.

CHAIRMAN DAVIS: They will bracket it, Commissioner Burdick.

MR. COAKLEY: Do you want to make this provision apply to the professional seller of heroin and hard narcotics?

MR. MILLIMET: It's only the possessor.

MR. NEEDHAM: Is it the intent of the Committee that if 407 is used in a state court, that probation in the state court after a plea of guilty--that there could be no prosecution in the federal court?

I'm disturbed about what was represented a few moments ago, what I think Commissioner Langrock said was a one-way street. There is no reciprocity between the Federal Act and this Act on prosecution?

MR. SONNENREICH: That is correct. This means that for the purpose of the state this would be a bar if there was a federal offense committed and the person had been acquitted on that offense, or another state acquitted him; but it does not mean that the Federal Government cannot prosecute him.

MR. NEEDHAM: If the federal law has been violated?

MR. SONNENREICH: Absolutely.

MR. NEEDHAM: So that if a judge decided to avail himself of the privileges accorded by Section 407, a federal justice having concurrent jurisdiction would be able to

frustrate that rehabilitative section by prosecution under the Federal Act?

MR. SONNENREICH: I assume we couldn't do anything about the Federal Act.

MR. AUERBACH: There is bracketing and bracketing. I assume that the reason for the bracketing will be shown. I'm afraid it will be considered as simply an alternative, and it's too important for that.

CHAIRMAN DAVIS: The Committee will add a comment to that effect. Is there any further comment on Section 407? [There was none.]

If not, we will proceed to Section 408.

MR. FORD:

SECTION 408. [Second or Subsequent Offenses.]

(a) Any person convicted of a second or subsequent offense under this Act, may be imprisoned twice the term otherwise authorized, fined twice that otherwise authorized, or by both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this Act or under any statute of the United States or of any State relating to narcotic

drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under section 401(c).

CHAIRMAN DAVIS: Any question on this section?

MR. GARDNER: Mr. Chairman, in our thinking on this Act and our drafting, I think it's important to make some distinctions between certain types of persons, such as just addicts, or pusher-addicts, and between certain substances such as hard drugs and marijuana. There are some realities that are involved in these matters that I think we should recognize, and one of them is a practical matter.

In these crimes involving transactions--multiple transactions, or as it is sometimes termed, trafficking--there is a practical matter that's faced by prosecutors. They often have known pushers that they could not get enough evidence against to convict under certain sections, so many times they have to resort to convictions under possession, and while that's not the equivalent of conviction under other sections, it does have its effect on several levels.

While we might want to make some distinction in this section (c) with respect to certain persons, with respect to certain substances, I think it would probably detract from

our objective if we were to make it applicable to all persons, and thus reduce the effectiveness of some enforcement efforts.

CHAIRMAN DAVIS: Thank you. Will the Committee take that under consideration?

MR. LANGROCK: I think this section points out the basic problem we have here, and the basic problem of the whole Act. This section presupposes the fact that if you make the penalty stiff enough, this whole problem will go away. Every time there is a subsequent offense, we make it stiffer, and really solve the drug problem.

The criminal law traditionally has failed in handling social problems by making crimes. I think the whole approach may be backwards. I do not think that the passage of this Act is going to have any appreciable effect on the use of drugs or marijuana ten years from now. I think the major effect of it with this approach is merely to bring a lot of young people into the court system in a fashion which will be detrimental to the public as a whole; and if we make the penalties stiffer and harder, we think we can solve the problem, and I think we should work for a more imaginative approach to it, because this is not the way it can be done.

MR. EASTHAM: Am I correct in assuming that by failing to adopt Professor Braucher's amendment, the sewing circle

passing of marijuana from one to another--the second time you get caught on that you would be subject to these double felony penalties?

They are not pushers. They are social friends, but they happen to get caught a second time.

MR. FORD: If by chance the prosecutor and the court would choose to charge the sewing circle passing of marijuana as distribution rather than as possession, and if that were done two successive times, the answer to your question is yes. If it were done under any other circumstances, the answer to your question would be no.

MR. BRAUCHER: Mr. Chairman, I don't know that I really should be speaking on this, because in a sense it is a point we have made and lost, but I really think that the notion that there is never a prosecution for more than a six-month penalty for a young person who is caught with one cigarette is an entirely erroneous view of the facts in the United States today.

The natural thing for any prosecutor in this situation is to decide first whether there has been a violation of the law. If there has been a violation of the law, it's very easy for him to say then: I'll prosecute. And when he decides to prosecute somebody for having possession with

intention to deliver to another, that person is then characterized forever after as a pusher, and that's what we're talking about quite often when we talk about pushers, and there are thousands of people who are being prosecuted for this, and the notion that we can trust our prosecutors not to do it is contrary to all of our experience.

Now, this section says that if you do that twice, you get the double sentence. Well, there's a lot of learning along this line, and we have got things like the New Jersey thing for a two-year minimum sentence, and we have had five-year minimum sentences for this, and the notion that they are never applied to young people, and that they are never applied to mere users, is contrary to all our experience.

CHAIRMAN DAVIS: Any other comments on this section?

MR. BURDICK: Even in the motor vehicle laws we provide that the first conviction must be within a certain time of the second conviction, such as within six months or within one year, or something of that sort. Here you may have a conviction when the individual is nineteen yeams old, and then eleven years later he's convicted of the same offense, and then your double penalties apply.

It seems to me there ought to be some closer interval of repetitiveness before you apply the double penalty.

CHAIRMAN DAVIS: They are willing to consider that, Commissioner Burdick.

If there are no other comments on this last section, we will go on to Article V, page 52.

MR. VAUGHAN: Article V, Enforcement and Administrative Provisions:

SECTION 501. [Powers of Enforcement Personnel.]

(a) Any officer or employee of the [appropriate agency] designated by the [appropriate person] may:

(1) Carry firearms;

(2) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this State.

(3) Make arrests without warrant for any offense under this Act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this Act which may constitute a felony;

(4) Make seizures of property pursuant to the provisions of this Act; or

(5) Perform such other law enforcement duties as the [appropriate person] may designate.

UHAIRMAN DAVIS: Any comment on Section 501?

MR. Z'BERG: I don't know that this Act is going to cut down on the use of marijuana, but it's certainly going to have a lot of people carrying guns, or shooting people.

Does the Act mean that any employee of, say, the Department of Public Health or the Attorney General's office would be carrying guns and making arrests, and all the rest?

MR. VAUGHAN: Note the wording "designated", please; if he is specifically authorized.

MR. Z'BERG: I'm somewhat concerned about the over-abundance of firearms, and I think there is considerable concern in some places--and, I think, in California--about the ability to carry guns indiscriminately. Merely giving some state officer the authority to designate all the people in his agency as those that carry guns frightens me somewhat.

We are usually very careful in designating peace officers, what their authority may be and who has the right to carry a gun, and I don't see why we need to give this much authority for the purposes of uniformity. I would think that each state ought to be able to designate those people who are going to be peace officers in their state.

CHAIRMAN DAVIS: Do you deny the right to people enforcing your Narcotic Drug Act to carry guns?

MR. Z'BERG: No, but we designate those people specifically who are authorized. We don't allow the secretary in the office to carry a gun and go home at night and pick up her next door neighbor.

MR. THOMAS: I know in our sheriff's department at home some are authorized to carry guns, and some are not, and I think to give the sheriff the authority to say who can and who can't is a proper delegation of authority.

MR. McKUSICK: Shouldn't it be limited at least by saying that he may carry firearms in the performance of his official duties?

MR. THOMAS: No objection.

MR. DAY: Am I correct in understanding that this permits the designated people to issue their own search warrants, arrest warrants, et cetera, and carry them out themselves?

MR. VAUGHAN: No, sir.

MR. DAY: Could you explain just a little bit?

MR. VAUGHAN: We don't ascribe that meaning to the word "execute", sir. It's as simple as that.

MR. THOMAS: A lot of people use the word "execute" meaning to get one in a position to serve it. In my state it would be "issue". You issue a warrant; but in other places you

execute one.

MR. DAY: Well, issued under the authority of the state means by a magistrate, or whoever has the authority.

CHAIRMAN DAVIS: Yes, sir.

MR. KASS: Could you explain subparagraph (5), "Perform such other law enforcement duties as the [appropriate person] may designate"?

MR. SONNENREICH: This is to pick up the activities, especially when they work in cooperation, with federal and state authorities working together, and they are cross-detailed. Here we're dealing not just with going out and making street arrests, but you are also conducting accountability investigations of concerns, and the boards of pharmacy in those states carry out those functions, and because the boards of pharmacy are more in on what's going on, they get detailed with the federal agents as well to perform those duties, and you need some delegation of authority.

MR. KASS: Under the Omnibus Crime in the Streets Act, this would permit these officers to wiretap and do other things which may not be in keeping with the spirit of what you are trying to accomplish here. I would think there ought to be at least a comment to explain what you are talking about, because it's awfully broad language, and it can be interpreted

very broadly by [appropriate persons], whoever they may be.

MR. VAUGHAN: We can clarify that in a comment.

SECTION 502. [Search Warrants.]

(a) A search warrant relating to offenses involving controlled dangerous substances may be issued and executed at any time of the day or night if the judge or magistrate issuing the warrant is satisfied that there is probable cause to believe that grounds exist for the warrant.

This next subunit, as I mentioned earlier, should begin with a bracket. You notice that it ends with a bracket. It's the so-called no-knock provision.

[(b) If a judge or magistrate issuing a search warrant is satisfied that there is probable cause to believe that if notice were to be given at the time the warrant is executed the property sought in the case is likely to be easily and quickly destroyed or disposed of before it can be seized, or that danger to the life or limb of the officer or another is likely to result, and has included in the warrant a direction that any officer executing it shall not be required to give notice, an officer authorized to execute the search warrant, without notice of his authority and purpose, may break open an

outer or inner door or window of a building, or any part of the building, or anything therein. Provided: that any officer acting under such warrant, as soon as practicable after entering the premises, shall identify himself and give the reasons and authority for his entrance upon the premises.]

CHAIRMAN DAVIS: Any comment on Section 502?

MR. WELLING: I make a motion to strike subsection (b).

CHAIRMAN DAVIS: You understand that's in brackets?

MR. WELLING: I want it stricken.

CHAIRMAN DAVIS: All right. Any discussion on the motion to strike subsection (b)?

MR. KASS: Mr. Chairman, I understand that it's in brackets, but the very last paragraph in the comment says:

This subsection is designed to give "no-knock" authority to those states which do not already have it and to codify it in those States which have allowed for it by judicial decision.

MR. VAUGHAN: That comment is in error. It should be expanded--and I assure you it will be--to indicate that it is optional upon the states which do not have it to still refrain from adopting it here. The comment does not go as far as

it should in indicating the optional nature of this paragraph.

MR. KASS: And if this motion is not passed, then this language will be changed?

MR. VAUGHAN: If the motion does not carry, the change I have suggested to you will be made.

CHAIRMAN DAVIS: Any further comment?

MR. MILLER: Actually, isn't it a fact that under case law the law enforcement officers already have a much broader authority than this would confer, and this in fact places some restriction or limitation upon the existing law? It would seem to me that if there ever was a provision where an officer needed some authority for the no-knock, this is it.

MR. SONNENREICH: Let me comment on that.

In thirty-one states now--I think it's thirty-two states--there is no-knock authority for an officer if he has a regular warrant, if he is in front of the door, if he believes there is a danger to his life or limb, or that the evidence will be quickly or easily destroyed. He can break down the door without announcing his authority or purpose.

Under this section, if he wants to get a search warrant and exercise that authority, he would have to explain it to a judge beforehand, before he would be allowed the no-knock authority. It is restrictive.

There has been a lot of argument on this, and a lot of heat on the no-knock, in terms of whether or not it is an invasion of privacy or not. The intent here was to put a bracketed provision in which was optional with the states that would be restrictive in terms of what can be done under a search warrant, in terms of no announcement or authority or purpose.

MR. BURDICK: May I suggest that we add "or other entrances to a building", and not limit it to doors or windows.

CHAIRMAN DAVIS: The Committee will take that suggestion.

MR. LANGROCK: I think we should realize here that from now on, if this is passed, every narcotics warrant will be served as a no-knock warrant.

I spent Thursday evening of last week with an agent in Vermont. He just couldn't wait to get his teeth in it, so he could really bust down doors, so he could go in. This is going to be a standard operating procedure.

The second thing is: what happens to the civilian in this situation when the search is made and there is nothing found? What about the embarrassment, the damage to the building, invasion of privacy? What remedies do you have there?

Unlike California, Vermont has a constitutional provision for the right to bear arms. I don't think 10 per cent of the households of Vermont don't have guns, and most of them are loaded most of the time, and I believe there will be more officers shot as they break in in the night time than you have any idea of. I know that if somebody breaks into my house at ten o'clock in the evening without announcing himself, I'm going to blast him from here to hell. And if I don't know he's an officer, I think I'm in a position at that point to do just that.

The thing that really bothers me about it is: who is for this no-knock provision? It has constitutional problems in it. It has all sorts of social problems. It's presented to us here today for the first time for discussion, and as I understand it this matter is going to go before the Conference for final adoption. At this time I think it's much too serious a matter, with too many ramifications, and if this is not struck from the Act, I would then suggest that the entire Act be recommitted. I would ask that this be struck first.

MR. ABRAMS: Mr. Chairman, I rise in support of this motion, and I do so with considerable melancholy, because I feel that many members of this association and of many others have been very sadly duped by the conduct of the U.S.

Department of Justice in its approach to law enforcement, which is reflected clearly in this bill.

One of the things that I have felt strongly that the organized Bar particularly should defend is some of these rights of people against invasions of the type sanctioned by Section 502. With our adoption of this, all over the world they would say: Well, look! This august body has seen fit to endorse this type of oppressive tactics. And I don't care whether you do it in brackets or you do not: you are still saying it is legal for a state to do this sort of thing.

I think that we are treading in this area particularly on such ground that I would personally be very unhappy with this organization if it passed this language. It would be a very sad thing for us to do. We do not know its constitutionality. We have not had a chance to reflect on it, as we have not had a chance to reflect on so many very serious aspects of this bill. Therefore I strongly urge that we pass this motion.

MR. EASTHAM: I hope the Commissioners in voting on this motion--and I support the motion--will consider that, really, the fact of having these warrants issued by a judge or magistrate--I think all you have to do is think about some of the magistrates and judges you have in your states, and

you will recognize that there is no real protection.

A law enforcement officer can always get what he wants out of some judge or magistrate. That certainly is the situation in our State, and I would imagine it's the same in all states.

The protection designed in this isn't there, because judges don't give the protection. If they did, it would be one thing; but they don't.

CHAIRMAN DAVIS: Any further comment?

MR. TOWNSEND: I notice that you use the words here "If the judge or magistrate...is satisfied". You don't say "if there is probable cause", and, my God! I can't believe that you are going to give the magistrate the final authority to determine in his own mind what reasonable cause is.

Obviously, that's what's intended, and I speak in favor of this motion, because the other night this group struck a blow for freedom when they decided in the Family Law Section that we wouldn't allow 1984 to occur in 1970, and that's exactly what this law is doing.

MR. BARNETT: I speak in support of the motion because in Nebraska, as many of you might know, we recently passed a bill which the proponents call the self-defense bill, and the opponents call the kill-your-neighbor bill. It would

be quite permissible under that bill to kill this law enforcement official as he came barging in, and then have the State pay for the cost of your defense.

MR. CUNNINGHAM [Md.]: I favor this motion too, because I believe that a power granted will be a power used, and it will be used exclusively.

While I'm in general sympathy, and appreciate the work that the Committee has done, particularly in identifying the various categories of drugs and things of that sort, I feel that the tone of this bill is more and more repressive, and I would like to see some attempt to try to suggest alternative ways of enforcement, such as, perhaps, offers of reward for information leading to conviction. Some positive provisions such as that, rather than repressive measures, might do better.

Also, I feel that clearer identification of the penalties would be better, because it's more important that penalties be certain than that it be strict or severe. The bill is addressed to officials, rather than teenagers and other members of our communities, who will be the victims of the particular problems that they face.

CHAIRMAN DAVIS: Any further comment?

[Calls for the question]

CHAIRMAN DAVIS: If not, we will have the vote on the motion, and that is to strike Section 502 (b).

[The motion was put to a voice vote.]

CHAIRMAN DAVIS: I think the ayes have it. Does anyone want to call for a division?

[Upon calls for a division, a standing vote was taken.]

CHAIRMAN DAVIS: The motion is carried.

MR. WELLING: In 502 (a) I have no quarrel with search warrants. We have had search warrants for many, many years, and I don't see the necessity of all of the language, and I would like to see the Committee redraft subsection (a) to the effect that search warrants should be provided as in other criminal cases. We don't need all of this comment.

CHAIRMAN DAVIS: I think the Committee probably agrees that the whole section now can be deleted, because you do not have to make a provision for a search warrant. It's already provided for in your law.

MR. MILLIMET: We will accept it.

MR. VAUGHAN:

SECTION 503. [Administrative Inspections and Warrants.]

(a) Issuance and execution of administrative

inspection warrants shall be as follows:

(1) A [judge of a State court of record, or any State magistrate] within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this Act or rule thereunder, and seizures of property appropriate to such inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of the Act or rules promulgated thereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant.

(2) A warrant shall issue only upon an affidavit of an officer or employee duly designated and having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they

exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, where appropriate, the type of property to be inspected, if any.

The warrant shall:

(i) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(ii) be directed to a person authorized by section 501 to execute it;

(iii) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, where appropriate, direct the seizure of the property specified;

(iv) identify the item or types of property to be seized, if any;

(v) direct that it be served during normal business hours and designate the judge or magistrate to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within 10 days of its

date unless, upon a showing by the State of a need for additional time, the court so instructs otherwise in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person executing the warrant. Upon request of the judge or magistrate, a copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge or magistrate who has issued a warrant under this section shall have attached to

to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the [appropriate State court for the judicial district] in which the inspection was made.

(b) The [appropriate person or agency] may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(i) places where persons registered or exempted from registration requirements under this Act are required to keep records; and

(ii) places including factories, warehouses, establishments, and conveyances where persons registered or exempted from registration requirements under this Act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled dangerous substance.

(2) When so authorized by an administrative inspection warrant issued pursuant to subsection (a) of this section an officer or employee designated

by the [appropriate person or agency], upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, shall have the right to enter controlled premises for the purpose of conducting an administrative inspection.

(3) When so authorized by an administrative inspection warrant, an officer or employee designated by the [appropriate person or agency] shall have the right:

(i) to inspect and copy records required by this Act to be kept;

(ii) to inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (b) (5) of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this Act; and

(iii) to inventory any stock of any controlled dangerous substance therein and obtain samples of any such substance.

(4) This section shall not be construed to prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with [insert appropriate State Code section], nor shall this section be construed to prevent entries and administrative inspections, including seizures of property, without a warrant:

(i) with the consent of the owner, operator, or agent in charge of the controlled premises;

(ii) in situations presenting imminent danger to health or safety;

(iii) in situations involving inspection of conveyances where there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(iv) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and,

(v) in all other situations where a warrant is not constitutionally required.

(5) Except when the owner, operator, or agent in charge of the controlled premises so consents in

writing, no inspection authorized by this section shall extend to financial data; sales data, other than shipment data; or pricing data.

CHAIRMAN DAVIS: Any comment on this section?

MR. GIBSON: On page 57, in your subparagraph (2), you state that the officer or employee must have knowledge of the facts alleged. Do you mean personal knowledge or knowledge by hearsay?

MR. SONNENREICH: That is knowledge among the agency, because one inspector may know the information and another one may not.

MR. GIBSON: That's the point I was going to raise. I think that probably should be made clear, that one agent doesn't have to have all the personal knowledge necessary to get a search warrant issued.

MR. SONNENREICH: That's correct.

CHAIRMAN DAVIS: Would it be all right if that were put in the comment?

MR. GIBSON: Yes. The fact is that the information for the investigation might not necessarily be from someone connected with the office, and then you get into the position, in the factual situation, of whether the deponent is a reliable one; but I think that should be clarified.

MR. WELLING: On page 59, lines 88 and 89, you provide that upon request a copy of the inventory will be supplied to the person they are taking it from. I would like to strike that "Upon request". If you are going to make an inventory, it's simple to make a copy, and I think the person whose property they have taken is entitled to have an inventory at that time.

CHAIRMAN DAVIS: The Committee will accept that suggestion.

MR. WELLING: Again on page 63, if I read this correctly, lines 168 through line 182, they can go in these premises without a warrant.

CHAIRMAN DAVIS: That's correct.

MR. WELLING: Well, I'll make a motion that we strike from line 168 through line 182. If they have this information, let them get a warrant. That's going right back to the paragraph we struck out before.

MR. MEANS: Referring back to the preceding question, what are the---

CHAIRMAN DAVIS: Excuse me just a minute. We have a motion. Are you speaking to the motion?

MR. MEANS: No.

CHAIRMAN DAVIS: Any discussion of that motion?

MR. MILLIMET: I don't understand the motion.

CHAIRMAN DAVIS: Let me state the motion, if I may. As I understand the motion, it is to strike line 168, page 63, through line 182 of that same page.

MR. NEEDHAM: I have the same difficulty in this situation as I have with the constitutional right of privacy to be protected. I feel that there is less reason for a right to go into a business premise to search for records which are required to be kept under this Act than there would be in the ordinary circumstance where a warrant is sought to seize property, or actually sought to search a person. It would seem to me that we are talking now about records that are to be kept. We are not generally talking about the home of a person. We are generally talking about his business, and I think very definitely that the prior speaker is on more sound ground here than we were a few minutes ago when we struck a similar provision related to search warrants.

I feel that this section from 168 to the end should be deleted.

MR. VAUGHAN: May I ask if it would satisfy the maker of the motion if the material were to say "is not required by law", rather than "is not constitutionally required"?

I can't speak for the Committee on that, but I think that might have been our intent, and something we would like to consider.

MR. WELLING: As I understand the Act, you have got all kinds of safeguards for guys to keep records, and the enforcement people have the right to go in and inspect them, and so forth. Here you are talking about just walking in and making a demand.

Now, for many years now--every day--they are cutting in on the rights of individuals, whether it's in business or in the home. If they have the knowledge that the law is being violated, let them go before a judge. It would give them a little protection, and give them some legal reason to go in there.

CHAIRMAN DAVIS: I understand that you would not be satisfied with the proposed language?

MR. WELLING: No, I would not.

CHAIRMAN DAVIS: Any further discussion on this motion?

MR. MILLER: Before we vote, let's hear from the Committee an explanation of why they think it's necessary.

MR. SONNENREICH: Well, starting on line 168, "in situations presenting imminent danger to health or safety",

these are the same provisions that are generally found in most of your codes for inspectors that are dealing in products that are consumed by human beings. This means that when there is a situation--the classic example that I'm sure you are all aware of is the cranberry episode up in Maine, or the situation where they found adulterated drugs that were mislabeled, that we want to be able to go in and immediately get those out of the chain of distribution. (ii) in situations presenting imminent danger to health and safety is the provision that is presently in the law. It is a situation that the court recognized in both Camara and in the Colonnade Catering case as a situation that would not require a warrant.

What we have done, in effect, with (iii), (iv), and (v) is, we looked at the three Court cases and we looked at the existing laws, and these are the situations that the Supreme Court recognizes when you are running accountability studies or audits dealing in items that are consumed by humans, that would allow us to go in without a warrant. This is the reason why we put in section (v), because there is even a question by some people as to whether or not the Supreme Court really meant to overturn Frank v. Maryland and have a situation where you have to have an administrative inspection warrant.

Those three cases overturn the long-standing policy,

which was that an inspector did not have to have a warrant, and he did not have to have the consent, as long as there was need to keep the records; but the Supreme Court stated in those three cases that if the man does not give his consent, then in these kinds of situations that we enumerated you must get a warrant--and that's what we tried to do. We tried to retain the situation so that in the emergency situation, in the situation where the warrant is recognized as not being needed, the inspector does not have to go get the warrant.

MR. WELLING: A warrant is something that can be obtained in a very short time. It's an ex parte matter. If they have this knowledge as to what is wrong, another fifteen or twenty minutes to get the proper order from the court to go out and conduct this experiment won't do any harm.

MR. MILLER: Assuming the vehicle is in the vicinity of one of these places, and he sees the car, and he looks in, and he can see what's in it, it's certainly movable enough that if he has got to leave and go get a warrant, that's a vain and useless thing.

Is that one of the situations that are contemplated by this?

MR. VAUGHAN: Yes.

MR. MILLER: Gentlemen, rights have two facets.

There are rights of the individual, and they should be protected, but there are also rights of the public and the victims of these drugs that are violated. Those rights should be kept in some sort of a balance.

I gather that in the existing case law this is permitted, but it would seem very foolish to deprive law enforcement officers of an opportunity to utilize this in an emergency situation.

CHAIRMAN DAVIS: Any further discussion on the motion?

[Calls for the question]

CHAIRMAN DAVIS: All right, the motion is to strike lines 168 through 182 on page 63.

[The motion was put to a voice vote.]

CHAIRMAN DAVIS: The noes appear to have it. They do have it.

MR. VAUGHAN:

SECTION 504. [Injunctions.]

(a) The [trial courts of the State] shall have jurisdiction in proceedings in accordance with the rules of those courts to enjoin violations of this Act.

(b) In case of an alleged violation of an injunction or restraining order issued under this section, upon

demand of the accused, trial shall be by a jury in accordance with the rules of the [State Courts].

CHAIRMAN DAVIS: Any comment on Section 504?

MR. ARNOLD: I'm always puzzled when you put in one of these things, "in accordance with the rules of the court", because we have an awful lot of trial courts that don't have any rules.

CHAIRMAN DAVIS: Don't you have any rules of civil procedure?

MR. ARNOLD: No, sir. They are by statute.

CHAIRMAN DAVIS: Will the Committee take that into account?

MR. McCLENAHAN: Yes.

MR. MEANS: On the preceding question, on page 57, I wondered what were the facts that you anticipated will be alleged in the affidavit on which the warrants will be issued, and which are supposed to be within the knowledge of the officers. On the preceding page it appears to say that all that is required for the warrant is that there be a strong public interest in enforcement of the statute and regulations.

MR. SONNENREICH: We tracked what the Supreme Court said in the three cases I mentioned. When they overturned the Frank v. Maryland decision, they recognized that here you

have a situation where you are not going in in a criminal sense, so that if you have the authority to conduct an inspection, and you can show a valid reason for inspecting that particular man, either because it's time to inspect him--that is, annually there is a time to check him up--or something of that nature, or that you have information--you have to aver in the warrant, but the probable cause standard with an administrative inspection is far less than in a criminal case. You are not necessarily going in to enforce criminal laws. You are going in to really regulate the particular registrant, so the averment is merely showing the reason why you are going in and what kind of investigation you intend to conduct.

The Supreme Court divided it into spot inspections and area inspections. By an area inspection they meant that if the decision was made that every registrant during the month of June--that is, a wholesaler--was to inspected, which they would be annually, then what would happen is that you would have to show that that was the intent, and that was the time that these people would be inspected, and it's a routine inspection, because they must keep records for you.

They also must ensure that the drugs are under lock and key, so it requires both a fact inspection and an inspection of the records.

MR. BURDICK: I would suggest that you use the same language in 504 (a) that you used last night in the Consumer Sales Practices Act: "The court [has] [may exercise] jurisdiction" for those states where the jurisdiction is derived from the constitution itself.

CHAIRMAN DAVIS: The Committee will accept that suggestion. I want to get that language. Will you give it to me later?

MR. BURDICK: Yes.

MR. VAUGHAN:

SECTION 505. [Cooperative Arrangements and Confidentiality.]

(a) The [appropriate person or agency] shall cooperate with Federal and other State agencies in discharging his [its] responsibilities concerning traffic in controlled dangerous substances and in suppressing the abuse of controlled dangerous substances. To this end, he [it] may:

(1) arrange for the exchange of information between governmental officials concerning the use and abuse of controlled dangerous substances;

(2) coordinate and cooperate in training programs on controlled dangerous substance law

enforcement at the local and State levels;

(3) cooperate with the Bureau by establishing a centralized unit which will accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled dangerous substance law offenders within the State, and make such information available for Federal, State and local law enforcement purposes; except that he [it] shall not furnish the name or identity of a patient or research subject whose identity could not be obtained under subsection (c).

(4) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled dangerous substances may be extracted.

(b) Results, information, and evidence received from the Bureau relating to the regulatory functions of this Act, including results of inspections conducted by that agency may be relied upon and acted upon by the [appropriate person or agency] in the exercise of its regulatory functions under this Act.

(c) A practitioner engaged in medical practice or research shall not be required to furnish the name or

identity of a patient or research subject to the [appropriate person or agency], nor shall the practitioner be compelled in any State or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential.

CHAIRMAN DAVIS: Any comment on this section? [There was none.]

We will proceed with Section 506.

MR. THOMAS:

SECTION 506. [Forfeitures.]

(a) The following are subject to forfeiture and no property right exists in:

(1) all controlled dangerous substances which have been manufactured, distributed, dispensed or acquired in violation of this Act;

(2) all raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled dangerous substance in violation of this Act;

(3) all property which is used, or intended for use, as a container for property described in

paragraphs (1) or (2);

(4) all conveyances including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt or property described in paragraphs (1) or (2), except that:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be subject to forfeiture under the provisions of this section unless it shall appear that the owner or other person in charge of the conveyance was a consenting party or privy to a violation of this Act; and

(ii) no conveyance shall be subject to forfeiture under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of the owner; and

(iii) no conveyance shall be subject to forfeiture for a conviction of a violation of

Section 401(c).

(5) all books, records, and research, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this Act.

(b) Property subject to forfeiture under this Act may be seized by the [appropriate person or agency] upon process issued by any [appropriate court] having jurisdiction over the property. However, seizure without such process may be made when:

(1) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding based upon this Act;

(3) the [appropriate person or agency] has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) the [appropriate person or agency] has probable cause to believe that the property has been used or intended to be used in violation of this Act.

(c) In the event of seizure pursuant to subsection (b), proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this section shall not be subject to replevin, but shall be deemed to be in the custody of the [appropriate person or agency] subject only to the orders and decrees of the [court having jurisdiction over the forfeiture proceedings]. Whenever property is seized under the provisions of this Act, the [appropriate person or agency] may:

(1) place the property under seal;

(2) remove the property to a place designated by him [it]; or

(3) require that the [appropriate administrative agency] take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(e) Whenever property is forfeited under this Act the [appropriate person or agency] may:

(1) retain the property for official use;

(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public. The proceeds shall be used

for payment of all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising and court costs;

(3) require that the [appropriate administrative agency] take custody of the property and remove it for disposition in accordance with law; or

(4) forward it to the Bureau for disposition.

(f) Substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of the provisions of this Act are deemed contraband and seized and summarily forfeited to the State. Substances listed in Schedule I, which are seized or come into the possession of the State, the owners of which are unknown---

That's where nobody will confess they own it.

...are deemed contraband and summarily forfeited to the State.

(g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this Act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited

to the State.

That's where your marijuana is in the field, and nobody wants to say that it's his field, or his crop.

(h) The failure, upon demand by the [appropriate person or agency], or his [its] duly authorized agent, of the person in occupancy or in control of land or premises upon which such species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, shall constitute authority for the seizure and forfeiture of the plants.

CHAIRMAN DAVIS: Any comment on Section 506?

MR. Z'BERG: Did the Committee consider the situation of the person who has a security interest in the automobile or the boat or tha airplane?

MR. MILLIMET: No, nobody mentioned it.

MR. Z'BERG: Well, I think we ought to have. Otherwise, the Bank of America will get that into this Act when it's introduced, I can assure you of that.

MR. THOMAS: We will take a look. I think the intent is to put it in there.

CHAIRMAN DAVIS: Any other comments on Section 506?

MR. VON HERZEN: On page 68, lines 27 and 28 of (i), there is a provision that the property shall not be

forfeited, "unless it shall appear that the owner"--and then come the words "or other person in charge of the conveyance was a consenting party".

Assuming that this is a Greyhound bus, and that the driver is in cahoots with somebody in Mexicali to bring in some marijuana, and takes a package on the Greyhound bus, I assume that the bus then is forfeited. Is that the intention?

MR. THOMAS: Yes, you hit it on the head. We have said just that. If the bus is being so used, we say it is subject to forfeiture, and the bus company would go into court in the forfeiture proceeding and prove that it had a right to get the bus back.

MR. VON HERZEN: There is a provision for that, so that the bus company that doesn't know about this criminal driver-- ?

MR. THOMAS: It would help the bus company get rid of its employee.

MR. VON HERZEN: But how does it get its bus back?

MR. THOMAS: I don't think the court would take it away from them. We say what property is subject to forfeiture only--subject to forfeiture.

MR. VON HERZEN: But the same thing, then, would be true of the railroad car when the conductor had some deal

with somebody in some other place to transport some marijuana. It seems to me that there should be some provision in there by which the business that employs an individual who happens to go sour isn't necessarily losing all of its property, whatever it might be.

MR. THOMAS: We do think it would lose it. We think the court would take care of it in the forfeiture proceeding. (ii) covers it, I think.

MR. TOWNSEND: This is a new sort of provision. It seems to me that when the officer seizes property here, and the bank or lender has to go in and reclaim the property, they ought to recover at least attorney's fees, and innocent people ought to get damages against the state officials under this law.

CHAIRMAN DAVIS: You're talking about in the ordinary forfeiture proceeding?

MR. TOWNSEND: I'm talking about seizure of property under this section--improper seizure.

CHAIRMAN DAVIS: As I understand the question, it is that there ought to be an attorney's fee allowed to the person getting his property back, and if it's an improper seizure, damages against the state.

MR. THOMAS: I would assume that that would be in

the state's forfeiture proceeding. We have not tried to go into the states' forfeiture proceedings. If they do allow damages for improper seizures, I think your state law on that subject would cover it.

MR. TOWNSEND: But this is the kind of law that most states do not have. This is copied from the federal law, is it not?

MR. THOMAS: No, sir. I understand that most states do have this.

MR. ARNOLD: As we get into this, I begin to grow somewhat concerned about what is the appropriate person or agency. I recognize the Committee has not attempted, necessarily,to deal with it, but it would appear that in every case it would be the same agency, and I'm concerned. For example, if it's going to be the State Health Department in some parts and the State Police Department in other parts, how do you distinguish, and how do they coordinate, and so on?

MR. SONNENREICH: The reason the Committee didn't get into that is that every state has a different means of dealing with these problems. Part of this bill would be, obviously, the scheduling of drugs, et cetera, and it would go into your Health Department. The enforcement on the street probably would go to your State Police, or your local police.

The regulatory inspections are normally handled by the State Board of Pharmacy.

So they are all different things, and there is an overlap of function in many places, and the states will have to tailor it to their own individual organizations; but the intent is not that one person do everything in this Act. That was not the intent.

MR. EASTHAM: What's the valid reason, aside from the fact that you have federal law, for actually seizing the motor vehicles that are carrying dangerous substances such as this? Is there any real rationale for it, or is it something that just grew up like Topsy and is being adopted here without any reason?

There are too many innocent people who will lose their vehicles, or fight like hell to get them back, and as I understand the federal law, you lose them even if you are innocent. So I would like to have some reason for having a right to seize a vehicle that just happens to have the narcotics in it.

MR. THOMAS: What the intent was here, Commissioner, was to try and right that topsy-turvy world of forfeiture. Most of the states do have forfeiture provisions. What we tried to do here was to make certain that the people like the

secured parties, the third party deed holders, the persons who don't have knowledge, can get their vehicles back automatically, and that there wouldn't be a problem. We also wanted to get away from the problem of the son taking the vehicle out, and the father doesn't know anything about it.

The intent here is that what we are trying to do is get the forfeiture against the people that are using the vehicles actually for the facilitation of the traffic in narcotics and other drugs. Most of the drugs that are coming in from abroad--abroad being Mexico--marijuana is not being brought in by hand; it's being brought in by automobile and by aeroplane, as we recently discovered, and part of the intent is that you can take away part of the means of transporting these goods, and also for the benefit of the state, and have that vehicle or airplane taken away, and that would have some deterrent effect on the profession.

What we are trying to do in these forfeiture provisions is clean up the very open-ended forfeiture provisions in most of the states; and I might add that we have done the same thing in the new federal bill as well, so that we don't have the inequities of the past visited on us in the future.

MR. EASTHAM: It's simply a matter of money. What is there about narcotics violation that requires you to seize

the vehicle of transportation that's different from any other criminal act?

MR. THOMAS: Because the reality of the situation is that in the states that are the major points of entry, the way the drugs get into the country, if you are talking about marijuana and if you are talking about heroin, is by a vehicle.

MR. EASTHAM: They are brought in by a person. You arrest the person. What's the vehicle done? That never hurt anybody. [Laughter]

MR. BURDICK: In Section 506 (a) you say: "The following are subject to forfeiture and no property right exists in". Why is it necessary to provide that no property right exists in contraband, or the property seized? Does it mean that the holders of security interest are going to lose their interest because of no property rights?

MR. THOMAS: We're going to take care of that. We may eliminate just what you said right there.

MR. VESTAL: Mr. Chairman, would the Committee consider in line 37 on page 68 deleting the words "a conviction of"? At the time of the seizure there has been no conviction. There has been a violation--a supposed violation--of Section 401 (c).

MR. THOMAS: I didn't get your question.

MR. VESTAL: I wonder whether you would delete "a uonviction of" in line 37 on page 68.

MR. THOMAS: We agree.

CHAIRMAN DAVIS: Any other comment on this section? [There was none.]

We'll go to Section 507.

MR. THOMAS:

SECTION 507. [Burden of Proof: Liabilities.]

(a) It is not necessary for the State to negate any exemption or exception set forth in this Act in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this Act, and the burden of proof of any exemption or exception is upon the person claiming its benefit.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this Act, he is presumed not to be the holder of the registration or form, and the burden of proof is upon him to rebut the presumption.

(c) No liability shall be imposed by virtue of this Act upon any authorized State, county or municipal officer, engaged in the lawful performance of his duties.

CHAIRMAN DAVIS: Any comment on Section 507?

MR. Z'BERG: In (c) on page 73, "No liability shall be imposed by virtue of this Act"--what liability were you talking about there? Were you talking about civil liability, for example, or were you talking about tort liability in the event that some activity of an officer resulted in some tortious conduct? What are you excepting from liability here?

MR. MILLIMET: Only things that are caused by this Act.

MR. THOMAS: We attempted to eliminate all liability where he is lawfully performing his duties.

MR. Z'BERG: That gives him immunity.

CHAIRMAN DAVIS: Where engaged in the lawful performance of his duties.

MR. COAKLEY: When the Supreme Court of the United States splits five to four on the question of the lawfulness of a search and seizure or an arrest, how can you expect an officer to know the difference between whether his action is lawful or not?

CHAIRMAN DAVIS: He may not, but he'll determine that when he finds out whether he gets relieved from any liability. [Laughter]

MR. MUNTER: I'd like to ask, Mr. Chairman, about

Section 507 (a), which casts the burden of proof in this kind of a situation upon the defendant. I think this is contrary to what the courts have held, in the sense that if there is, for example, a license or a permit to have possession of these items, the burden of proof is upon the government to prove that the man didn't have a license.

I don't know whether the Committee has given this any thought, but in my opinion this provision (a) is contrary to all the decisions and contrary to the Constitution.

MR. SONNENREICH: This is the provision also of the Uniform Narcotic Drug Act. This has been the law for some forty years. It has recently been tested in the cases of ? ? ? Freeman, Erlyn, and Deyo, and the Court said that if you are claiming an exemption from the law, that you who are claiming the benefit must come forth and present it. There is no presumption going against you. There is an inference going against you.

MR. MUNTER: I must confess, Mr. Chairman, that I'm not familiar with these citations you have given me, but I can assure you that that's not the general trend of the decisions. The general trend is that it's upon the government, the prosecution, to prove that the man didn't have a license to have in his possession this material, or these prohibited

items.

I think the Committee ought to give this matter further thought.

MR. THOMAS: We'll take another look at it, but I think you have the answer.

MR. MUNTER: I'd be glad to cooperate with you in giving you the other side of the coin.

MR. TOWNSEND: Do you have a provision for notice and hearing to, say, a person holding a security interest on a motor vehicle in case of forfeiture?

MR. THOMAS: That is going in, yes, sir. On the secured party, we are going to take care of that, and the language will be brought back to you on it.

SECTION 508. [Judicial Review.] All final determinations, findings and conclusions of the [appropriate person or agency] under this Act shall be final and conclusive decisions of the matters involved, except that any person aggrieved by the decision may obtain review of the decision in the appropriate State Court]. Findings of fact by the [appropriate person or agency], if supported by substantial evidence, are conclusive.

CHAIRMAN DAVIS: Any comments on Section 508?

MR. ARNOLD: Which one of my agencies would have to

put this in, the Public Health Department, or the Police Department?

MR. MILLER: Whichever one you want.

MR. ARNOLD: Well, they are going to both do it.

CHAIRMAN DAVIS: You might name three, if they are making findings of fact.

MR. ARNOLD: I think it's going to be mandatory on the Committee that they provide the Commissioners with some guidance on the completing of these various blanks in this thing at some point.

MR. THOMAS: Let us give further thought, then, to covering the comments you have just made. We could give some illustrations.

SECTION 509. [Education and Research.]

(a) The [appropriate person or agency] shall carry out educational programs designed to prevent and deter misuse and abuse of controlled dangerous substances. In connection with these programs he [it] may:

(1) promote better recognition of the problems of misuse and abuse of controlled dangerous substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and

interested groups and organizations in contributing to the reduction of misuse and abuse of controlled dangerous substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled dangerous substances;

(5) disseminate the results of research on misuse and abuse of controlled dangerous substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of State and local law enforcement officials in their efforts to control misuse and abuse of controlled dangerous substances.

(b) The [appropriate person or agency] shall encourage research on misuse and abuse of controlled dangerous substances. In connection with such research and in furtherance of the enforcement of this Act, he

[it] may:

(1) Establish methods to assess accurately the effects of controlled dangerous substances and to identify and characterize controlled dangerous substances with potential for abuse;

(2) Make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this Act;

(ii) determine patterns of misuse and abuse of controlled dangerous substances and the social effects thereof, and,

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled dangerous substances; and

(3) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled dangerous substances.

(c) The [appropriate person or agency] may enter into contracts for educational and research activities without performance bonds and without regard to [appropriate code section].

(d) The [appropriate person or agency] may authorize persons engaged in research on the use and effects of dangerous substances to withhold the names and other identifying characteristics of persons who are the subjects of the research. Persons who obtain this authorization shall not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the subjects of research for which the authorization was obtained.

(e) The [appropriate person or agency] may authorize the possession and distribution of controlled dangerous substances by persons engaged in research. Persons who obtain this authorization are exempt from State prosecution for possession and distribution of controlled dangerous substances to the extent of the authorization.

CHAIRMAN DAVIS: Any comments on the section just read?

MR. McKUSICK: Is the language in lines 31 to 33 on

page 75 broad enough to encompass research in the treatment of addicts?

MR. THOMAS: I have my doubts if it's broad enough to do what you and I both have in mind. I think that would be in the other Act--where it ought to be, I think, really.

MR. McKUSICK: Would the Committee consider clarifying that language?

CHAIRMAN DAVIS: Any other comments on this section? [There were none.]

We will go to the next section.

MR. THOMAS:

SECTION 601. [Pending Proceedings.]

(a) Prosecutions for any violation of law occurring prior to the effective date of this Act shall not be affected by these repealers or amendments, or abated by reason thereof.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of this Act shall not be affected by these repealers or amendments, or abated by reason thereof.

(c) All administrative proceedings conducted under prior laws of this State which are superseded by this Act and are pending before the [appropriate person or agency]

on the effective date of this Act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of the Act. Any other substance with respect to which such a final determination has been made prior to the effective date of this Act, which is not listed within Schedules I through IV, shall automatically be controlled by the [appropriate person or agency] without further proceedings and listed in the appropriate Schedule.

(d) The [appropriate person or agency] shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled dangerous substances prior to the effective date of this Act and who are registered or licensed by the State.

(e) This Act shall apply to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

CHAIRMAN DAVIS: Any comments on Section 601?

MR. PIRSIG: Mr. Chairman, I believe the Committee had approved a provision that where the penalties under this Act were less than those which are provided for like acts

under existing laws,the lesser penalties under this statute would apply. I do not see that in this section, or anywhere else in the Act.

MR. MILLIMET: Mr. Pirsig is right.

MR. THOMAS: There is an inadvertent omission. We have got that somewhere. We'll have to print it and bring it back to you.

Have you got it back there, Pete?

[There was no response.]

MR. THOMAS: We're not at all satisfied about whether the language will hold up, but we have said something to the effect that where penalties for the violation of this Act are less than the penalties under prior existing law, then the penalties under this Act would apply for the same violations. I think that's in substance what it says.

CHAIRMAN DAVIS: Any further comment on this section?

MR. MILLIMET: I have it right here, if you want it.

MR. THOMAS: Please.

MR. MILLIMET: This is to read:

Prosecution for any violation of law occurring prior to the effective date of this Act shall not be affected by these repealers or amendments, or abated by reason thereof, provided that if the offense being

prosecuted is similar to one set out in Article IV of this Act, then the penalties under Article IV shall apply if they are less than those under prior law.

MR. THOMAS: That will be an additional subsection to 601.

MR. VESTAL: In 601 (c), line 14, there is a reference to any other substance. I don't find "substance" referred to before in (c). I think that should be clarified.

MR. THOMAS: We'll do that.

CHAIRMAN DAVIS: Any other comment? [There was none.]

If not, will you read Section 602, please.

MR. THOMAS:

SECTION 602. [Continuation of Rules.] Any orders and rules which have been promulgated under any law affected by this Act and which are in effect on the day preceding enactment of this Act shall continue in effect until modified, superseded or repealed by the [appropriate person or agency].

Now, the rest of these sections are the usual boilerplate sections. We will not read those, but there are some amendments that were made during the noon hour by the Committee, and we'd like to present those.

MR. FORD: Gentlemen, these are amendments and suggestions that were adopted by the Committee at its noon meeting.

I would first direct your attention to page 2, lines 21 and 22. Delete the sentence at the top of the page:

> The term does not include distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used---

...and so forth. Delete beginning with "The term", and the rest of that paragraph.

Still on page 2, line 32, after the word "transfer" insert the words "from one person to another".

Still on page 2, line 43, after the word "recognized" insert the words "as drugs".

Now, on page 10, immediately under line 51 add the following subsection:

> (e) Authority to control under this section shall not include distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in [insert relevant sections if applicable].

That has the effect, when taken with the earlier deletion, of moving the alcohol, wine, tobacco out of the definition section and into the enforcement section of the Act.

That's the Braucher drinking and smoking amendment. [Laughter]

On page 30, line 32, following the end of the sentence, add these words: "or in possession of a Schedule IV substance."

MR. MILLIMET: Explain how that goes with 401 (c). [Conferring]

That's to prevent the possession of cough syrup being a misdemeanor under Section 401 (c).

MR. FORD: That's the Braucher cough syrup amendment. [Laughter]

Now, on page 32, line 15, delete the words "record of". Delete lines 16 through 18, and replace them with these words: "under any State or Federal law relating to any controlled dangerous substance".

Still on page 32, after line 22, insert these two new items. This will be, probably about six lines.

I might say that we have these amendments. We are going to provide them as soon as we can with the Thermofax machine, but another committee pre-empted it, and we wanted to give them to you now.

(5) furnishing by the applicant false or fraudulent material information in any application filed under this Act;

(6) suspension or revocation of the applicant's Federal registration to manufacture, distribute, or dispense controlled dangerous substances as authorized by Federal law;

Then on line 23 change the (5) to (7).

Everybody with us?

Now, on page 35, lines 12 and 13, delete the words "and is no longer authorized by federal law".

On page 36, lines 19 through 40 will no longer be included as part of this section. They are going to come in later. On line 41 reletter (e) to (c).

On page 37, line 52, change (f) to (d), so that Section 304 will have (a), (b), (c), (d), as has just been outlined to you.

Then after the comment on page 37, pick up a new Section 304A, the title of which will be "Order to Show Cause". Paragraph (a) of this new Section 304A will be what has heretofore appeared on page 36, line 19, as (c). So go back to page 36, make that (c) an (a); it's paragraph (a) of new Section 304A.

Drop down to line 34 and make that (b) of this new Section 304A, Order to Show Cause.

Everybody with us?

On page 38, lines 1 and 2, delete the words "and establishments".

On page 39, line 8, after the word "prescription" insert the words "by a practitioner".

On page 40, line 17, after the word "prescription" insert the words "by a practitioner".

MR. MILLER: Weren't you also inserting "or federal" on the preceding line?

MR. FORD: Page 40, line 16, after the word "State" insert the words "or **Federal**".

Still on page 40, in the comment, add: "See Section 302 (c) (3)." That's an addition to the comment.

Finally, on page 68, line 39, add a new (iv):

> ...if a conveyance is subject to a bona fide security interest, any forfeiture shall be subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission.

Any other corrections?

MR. FRASER: I would like to make a motion. On page 3, line 48, and again in line 50, it says "man or other animal". I move that the word "other" on both those lines be stricken.

Now, I realize this morning mention was made that members of Congress had voted that language. I hate to think that we're going to sit here and vote ourselves animals, and I don't think that it is a necessary word. It doesn't make sense to me. To me it makes equal sense to say "man or animals".

CHAIRMAN DAVIS: Will you accept it? [Conferring]

Apparently the Committee is divided. You have made that in the form of a motion. Can't we act on that quickly?

[The motion was put to a voice vote.]

CHAIRMAN DAVIS: The ayes appear to have it. [Laughter] The ayes do have it.

Any further comment?

MR. DANA: Mr. Chairman, turning to page 39, in line 8 I suggested, after "oral prescription" that the same words that are in line 5 be inserted, "of a practitioner". You have done that, except you said, "by a practitioner". Since the "by" in line 8 would follow so closely the words "dispensed", you are going to get tremendous confusion. So, I think, both in line 8 it should be "of a practitioner", and similarly in line 17 of the next page.

CHAIRMAN DAVIS: They will accept that. Any further comment?

MR. PIRSIG: Mr. Chairman, I'd like to refer back to page 50, Section 408, and page 51, and move to bracket that section. I'd like to state why, for reasons that were not raised at the time that section was considered.

MR. MILLIMET: The whole section?

MR. PIRSIG: The whole section.

CHAIRMAN DAVIS: Do you care to comment on it?

MR. PIRSIG: Yes.

This section would be at variance with many states which now have the multiple sentence type of statute. There are some inherent objections to provisions of this kind which I will not comment on, beyond stating that it provides only for the second offense. There is no provision for increased penalties where there is a third offense, which is common to many statutes, and the misdemeanor is included along with the felony in terms of making the statute applicable.

These provisions, whether it is a misdemeanor or a felony and whether they are crimes within the state or not, are all at variance with many state provisions. In some states these provisions are limited to dangerous persons or professional criminals, and some of the national organizations, such as the National Council on Crime and Delinquency, have limited this kind of statute to those conditions.

It seems to me we ought not to ask the states in this particular statute to change their policy in respect to that particular point. Therefore, I would like to move that this be bracketed, and leave the states to choose as they will.

CHAIRMAN DAVIS: Is there comment on the motion? [No one responded.]

[The motion was put to a voice vote.]

CHAIRMAN DAVIS: The ayes appear to have it. The ayes do have it.

MR. McCLENAHAN: Mr. Chairman, I move that the Committee of the Whole rise, report that it has had under consideration the Uniform Controlled Dangerous Substances Act, has considered it section by section, has made certain changes and amendments, and recommends that the Act, as so amended, be approved and presented to the Conference for a vote by states for final adoption.

CHAIRMAN DAVIS: You have heard the motion.

MR. ABRAMS: I would like to move a substitute motion.

This Act, at great length, came before us today for the first time, and I---

CHAIRMAN DAVIS: Give us your motion first, and then the reason.

MR. ABRAMS: The motion is that this Act be held over for another Conference, in accordance with the standard rules of this organization. That is the motion.

CHAIRMAN DAVIS: All right.

MR. ABRAMS: And in support of that motion I want to just rehearse how this came about. At the meeting on Saturday morning of the Executive Committee---

CHAIRMAN DAVIS: Excuse me just a minute, Commissioner Abrams. It has been suggested to me that your motion is out of order if it is directly opposite to the motion that has been made. You can speak in opposition to the motion, but if the motion doesn't carry all your motion is doing is having the same effect.

So may I suggest that your motion is out of order, but your comments against the motion are in order.

MR. ABRAMS: Well, I was informed, Mr. Chairman, that the motion could be made in the form in which I made it; that I could move a substitute motion for the motion made by the Section Chairman.

CHAIRMAN DAVIS: Well, do you mind just speaking against the motion, in the interest of time? I'm not a parliamentarian, and I don't want to argue that feature with you. Why don't you simply speak against the motion?

Because that's what it amounts to.

MR. ABRAMS: Well, if it's absolutely clear that the issue is whether we pass it finally this year or set it for consideration next year, I have no objection to speaking in opposition to the motion of the Section Chairman.

CHAIRMAN DAVIS: That is exactly what it is.

MR. ABRAMS: I'm against adoption this year, because I do not see the great haste. Nearly every state--and, I believe, all of the states--have adopted either our 1932 Act or the 1958 Amendments. There is no mad urgency for this particular Act. The last one we had persisted, as you can see, for something like forty years, and if we are going to pass an Act that is going to have an impact for so long a period of time, it seems to me proper that this Act be given the consideration that a subject so fraught with difficulty deserves.

I was not prepared today, really, to consider these things carefully. I had no chance to check this Act with the people back in my home State who may be experts in the field, nor did many of the other people here who have been speaking for or against it. The Act has so many complex procedures, and to me in substance it does not seem to reflect the great learning that has accrued over the last forty years in

connection with the prevention of the use of drugs. It seems merely to make things tougher.

So I just feel that I would like, myself, to have this Act come back another year, and consider it with the Committee, and have the Committee consider it, and have this Conference consider it. So, therefore, I would be in opposition to this motion.

CHAIRMAN DAVIS: Is there any further comment on the motion?

MR. KIDWELL: Mr. Chairman, I also speak in opposition to the motion. We're dealing with one of the most delicate and pervasive issues that's in our society today. The question of the use of marijuana is dividing our generations. This Act that is before you flatly takes a position on that issue. There is dispute among sociologists and scientists with respect to this issue, and I have seen most persuasive evidence, or presentations, that indicate that the youthful generation may have the best of the issue.

For this Conference now to put its prestige on one side of that issue without the consideration that our procedures regularly call for, I think, is unwise and unwarranted.

MR. EASTHAM: Since New Mexico will not be here at

the vote of the states, I want to support the opposition to this motion to have this voted on this year. I share the same sentiments expressed by my East Coast friend and my Far West Coast friend, that this is premature. This is an issue that this Conference has simply not spent enough time on.

The marijuana question is one that this group can't decide in a day, and I think it should go over until next year.

MR. LYNN: South Dakota and two other states have already passed an Act much more stringent than this one. We felt that there was a need for such legislation, and we passed an Act because this one was not available to us. We feel there are other states in our position. I feel this should pass.

MR. THOMAS: I want to speak for the motion again.

We, as I see it, have an opportunity of giving the states what the governors and attorney generals have seemingly indicated they are most anxious to receive, not a year from now but as soon as we can give it to them. I think this is an Act that this Conference can obtain almost uniform acceptance of in a relatively brief period of time.

I am sympathetic that we don't have rehabilitation provisions, that we don't have more information on marijuana, but I am in no way inclined to believe that either will be

solved in another year. I think it's going to be many years.

I think this Conference may well want to take another look at this Act--not next year, but within two or three years--on the marijuana question.

To delay this is to do no more than perpetuate the minimum mandatory sentences for marijuana violations now on the books in most of the states. The Committee and the Section have been most anxious to put across to you not that we are trying to railroad something, give you something that you must take, but to put across to you our thought that we are going to get left behind. The Act is going to be adopted. The Conference can take the credit for universal--as I think it will be--acceptance of an Act, or we may as well forget it and look at it as a Model Act. I don't think that's what we want to do.

MR. JENNER: Mr. Chairman, I rise to take the privilege of speaking in favor of the motion.

You will recall that in my address to the Conference at the opening session on Saturday one of the points I raised for your consideration was that a new era had come to this Conference of supplementation of Federal Acts, of stimulating federal activity in connection with the needs of the states, but in a manner and fashion that enabled the states to

exercise their own judgment and to bring to bear their public policies, rather than having those public policies determined by the Federal Government.

This is one of those situations. The Federal Controlled Substances Act is now pending in the Congress. It will be enacted at this session of the Congress. This bill, to the extent that you have up to the moment worked on it, does track that bill.

Recently I reminded you that at the conference of the governors of all the states of the Union there was urged upon those governors by the President of the United States the need for this statute to be enacted by the states themselves, and the troubles facing this country in this particular area are ones that require immediate action. And so impressed were the governors of the states of this Union that in sixteen states of the Union there has already been passed a preliminary draft of the statute, and those preliminary drafts are not in good order, and there is important need for the states that have already enacted preliminary drafts of this statute to have this one, now considered by this Committee and now considered by this Conference, presented to those state legislatures, and I hope that the motion is adopted.

CHAIRMAN DAVIS: The question is whether this Act shall be submitted for a vote by the states at this session. If you vote in favor of it, it will be. If you vote against it, and defeat the motion, then it will be carried over.

[The motion was put to a voice vote.]

CHAIRMAN DAVIS: The ayes appear to have it. The ayes have it.